



**THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NORTH CAROLINA**

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*Chief Judge*

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*District Judge*

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*Senior District Judge*

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JAMES C. FOX

*Senior District Judge*

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LOCAL RULES OF PRACTICE AND PROCEDURE  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
NORTH CAROLINA

OCTOBER 15, 1997  
with Amendments

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## **I. General Rules**

### **Rule 1.00**

#### **SCOPE AND CITATION OF LOCAL RULES**

These local rules of practice shall govern the conduct of the United States District Court for the Eastern District of North Carolina except when the conduct of this court is governed by federal statutes and rules. A judge or magistrate judge, for good cause and in his discretion, may alter these rules in any particular case. These rules shall be cited: "Local Rule \_\_\_\_, EDNC."

### **Rule 2.00**

#### **ATTORNEYS**

**2.01: Roll of Attorneys.** The bar of this court consists of those heretofore admitted and those hereafter admitted as prescribed by this Local Rule 2.00.

**2.02: Eligibility.** A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.

**2.03: Procedure for Admission.** Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (a) Is a member in good standing of the bar of the Supreme Court of North Carolina; and
- (b) Has studied the Federal Rules of Civil Procedure and Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

I do solemnly swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court, uprightly and according to law. So help me God.

Following the administration of the oath, the application shall be signed by the judge or magistrate judge and the applicant shall file the application, accompanied by a fee of \$80.00, with the clerk. The clerk shall then issue the applicant a certificate of admission to the bar of this court. Upon the filing of a properly certified and executed application accompanied by the admission fee of \$80.00, the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client until the applicant has taken the oath.

(c) Current law clerks to judges of this Court as well as to magistrate judges and bankruptcy judges with in this District shall be admitted to the bar of this Court without payment of an admission fee.

**2.04: Representation by Local Counsel Who Must Sign All Pleadings.** Litigants in civil and criminal actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign each pleading, motion, discovery procedure or other document filed in this court, including his state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this rule, he shall in each instance designate himself "LR 2.04 Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. However, counsel does not make the certification required by Rule 11 of the Federal Rules of Civil Procedure. Nevertheless, the requirements of Rule 11 must be complied with by out-of-state counsel. Signatures in the following form shall be



sufficient to comply with this rule. Rule 2.04 Local Counsel must include state bar number and fax number in the signature block on all pleadings:

---

Jane M. Jones  
Attorney for Defendant  
Jones, Jones and Jones  
P.O. Box 500  
New York, NY 10050  
(212) 555-1212

---

John B. Counselor  
Attorney for Defendant  
Abbott, Ball and Counselor  
P.O. Box 50  
Raleigh, NC 27602  
(919) 878-8787  
Fax (919) 878-8000  
LR 2.04 Counsel

**2.05: Appearances by Attorneys Not Admitted in the District.** Any person who is a member in good standing of the bar of a United States District Court and the bar of the highest court of any state or the District of Columbia and who is neither a resident of this state nor engaged in the practice of law in this state shall be permitted to appear in a particular matter in association with Rule 2.04 local counsel. Pursuant to this rule, counsel may enter a notice of appearance without the necessity of filing a motion to appear pro hac vice. The appearance of such a person in a particular matter shall confer jurisdiction upon this court for any alleged misconduct of that person or for any other purpose arising in the course of or in the preparation of such matter.

**2.06: Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear.** Pleadings and other documents filed in a case where an attorney appears who is not admitted to the bar of this court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Local counsel shall attend all court proceedings unless excused by the court.

**2.07: Withdrawal of Appearance.** No attorney whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the court.

**2.08: Courtroom Decorum.** Counsel shall conduct themselves with dignity and propriety. Counsel shall rise when addressing the court, and all statements to the court shall be made from a counsel table or from behind the lectern facing the court. Counsel shall not approach the bench unless requested to do so by the court or unless permission is granted upon the request of counsel.

**2.09: Questioning of Witnesses.** Only one attorney for each party may question a particular witness unless the court allows otherwise. Counsel shall remain seated while questioning witnesses.

**2.10: Professional Standards.** The ethical standard governing the practice of law in this court are the Revised Rules of Professional Conduct, incorporated now in force and as hereafter modified by the Supreme Court of North Carolina, except as may be otherwise provided by specific rule of this court. Counsel are directed to advise the clerk within ten days of disciplinary action taken against them resulting in suspension or disbarment. The disciplinary procedures of this court shall be on file with the clerk and furnished to counsel upon request.

**2.11: Admission of Attorneys Previously Admitted to the United States District Courts for the Middle or Western Districts of North Carolina.** Attorneys already admitted to the bar of either the United States District Court for the Middle District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by Rule 2.03, together with a copy of

the order admitting the attorney to practice in one of the other districts, without the necessity of taking the oath that is otherwise required and without obtaining the character certification by two members of the bar of this court.

### Rule 3.00

#### COURT SCHEDULE AND CONDUCT OF BUSINESS

**3.01: Headquarters of the Clerk.** The headquarters of the clerk of court shall be in Raleigh.

**3.02: Divisions of the District.** There shall be four divisions of the court. Headquarters of each division and the counties comprising each division are as follows:

Name of Division	Headquarters		Counties
Northern Division	Elizabeth City	Bertie	Hertford
		Camden	Northampton
		Chowan	Pasquotank
		Currituck	Perquimans
		Dare	Tyrrell
		Gates	Washington
Eastern Division	Greenville	Beaufort	Hyde
		Carteret	Jones
		Craven	Lenoir
		Edgecombe	Martin
		Greene	Pamlico
		Halifax	Pitt
Western Division	Raleigh	Cumberland	Vance
		Franklin	Wake
		Granville	Warren
		Harnett	Wayne
		Johnston	Wilson
		Nash	
Southern Division	Wilmington	Bladen	Onslow
		Brunswick	Pender
		Columbus	Robeson
		Duplin	Sampson
		New Hanover	

**3.03: Assignment of Cases to a Division.**

(a) **Civil Actions.** The clerk shall assign all civil actions to a division when the action is filed or removed. If one or more plaintiffs are residents of this District, the clerk shall assign the case to the division in which the first named such plaintiff resides. If no plaintiff resides in the District and one or more defendants reside in the District, the clerk shall assign the action to the division in which the first named such defendant resides. In the event no party resides in the District but the claim is alleged to have arisen in the District or to involve real property in the District, the clerk shall assign the action to the division in which such claim is alleged to have arisen or in which the real property is situated. In all other instances, a case shall be assigned to a division in the discretion of the clerk.

(b) **Criminal Actions.** The clerk shall assign all criminal indictments to a division when an indictment is filed or

transferred. If the indictment alleges the crime occurred within the District, the clerk shall assign the action to the division in which the crime is alleged to have occurred. In cases where it is not alleged that the crime occurred in the District or in cases in which it is unclear in which division the alleged crime occurred, the clerk shall assign the indictment to the division in which the first named defendant, who resides within this District, resides. In all other instances, an indictment shall be assigned to a division in the discretion of the clerk.

(c) **Residence of Corporation.** For the purposes of this Local Rule, a corporate plaintiff shall be deemed to reside in the state in which it was incorporated and in the district and division in which it has its principal office; and, a corporate defendant shall be deemed to reside in the division in which the corporation is alleged (1) to be incorporated and have its principal office, or (2) to be licensed to do business or (3) to be doing business.

(d) **United States as Plaintiff.** For the purposes of this Local Rule, in cases where the United States, its agencies or officers acting in an official capacity is the plaintiff, it shall be deemed that such plaintiff does not reside in this district.

**3.04: Court in Continuous Session.** This court shall be in continuous session in all divisions of the District on all business days throughout the year. All matters of either a criminal or civil nature not reached at the regular sessions of court are deemed to be in an open status and subject to being called for disposition before the next regular session of court upon reasonable notice to the interested parties.

**3.05: Correspondence.** Correspondence addressed to the court shall indicate that copies have been transmitted to all other parties and failure to transmit the same to all other parties may result in sanctions by the court. Such correspondence shall not become a part of the record in the case.

**3.06: Forms of Pleadings, Motions and Documents.** All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

(a) be double-spaced on standard letter size (8 ½ x 11) paper, with all typed matter appearing in at least 11 point type and not exceeding 6 ½ by 9 ½ inches;

(b) state the court and division in which the action is pending;

(c) bear, except for initial filing, the case number assigned by the clerk;

(d) contain the caption of the case;

(e) if applicable, state the title of the pleading, motion, discovery procedure or document and the federal statute or rule number under which the party is proceeding;

(f) contain the individual name, firm name, address, telephone number, fax number and State Bar identification, where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Rule 2.05;

(g) bear the date when signed by counsel;

(h) be signed by counsel as required by Local Rule 2.04/Local Rule 2.04 counsel may submit for filing a facsimile copy of the signature of out of state counsel on pleadings provided that a signature page with all original signatures is submitted to the court within two business days after the original filing;

(i) on all documents, the signature of parties and counsel shall be followed, on the line immediately below, by the typed or printed name in the exact form as the signature. In preparation of documents for signature by a judge or magistrate judge, a blank space shall be provided below the signature line in which the name may be typed or printed; and

(j) have each page numbered sequentially. The following forms are examples to be followed:

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. \_\_\_\_-CV-\_\_\_\_-\_\_()

JAMES T. SMITH,

Plaintiff,

v.

AARON R. JONES, et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

OFFER OF JUDGMENT

Rule 68, F.R.Civ.P.

OR IN CRIMINAL CASES

UNITED STATES OF AMERICA,

v.

AARON T. JONES,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)

MOTION TO TRANSFER PROCEEDING

Rule 21(a), F.R.Crim.P.

(Closing)

This \_\_\_\_ day of January 1998.

---

John B. Counselor  
Attorney for Defendant  
Abbot, Ball and Counselor  
Attorneys at Law  
200 Main Street  
Post Office Box 50  
Raleigh, North Carolina 27602  
(919) 878-8787  
Fax (919) 878-8000

**3.07: Filing and Service of Papers.** Unless otherwise specifically provided for, the original of all pleadings and other papers required to be filed or served shall be filed with the clerk in the office of the clerk in Raleigh, Greenville or Wilmington regardless of the division to which the case is assigned. When the law requires a proceeding to be heard and determined by a district court of three judges, pleadings and other documents shall be filed in triplicate. In all cases, whenever a pleading (subsequent to the complaint) or other paper is required to be filed with the clerk or with the court, a copy thereof shall be served upon opposing parties as provided in Rule 5(b), F.R.Civ.P.

**3.08: Discovery Materials Not to Be Filed Unless Ordered or Needed.** Discovery materials, including but not limited to disclosures and objections required under F.R. Civ. P. 26, depositions upon oral examination and interrogatories, requests for documents, notices to take a deposition, expert witness designations, expert witness reports, requests for admissions, and answers and responses thereto are not to be filed unless by order of the court or for use in the proceedings. All such papers must be served on other counsel or parties entitled to service of papers filed with the clerk. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

**3.09: Change of Address.** All attorneys and pro se parties must notify the court within 10 days of any change of address. Failure to notify the court in a timely manner of an address change may result in dismissal of the action or the imposition of such other relief that the court deems just and proper.

## **Rule 4.00**

### **MOTION PRACTICE**

**4.01: Time for Filing.** All motions in civil cases except those relating to the admissibility of evidence at trial must be filed on or before 30 days following the conclusion of the period of discovery. If an extension of the original period of discovery is approved by the court, the time for filing motions is automatically extended to 30 days after the new date.

**4.02: General Requirements.** All motions shall be concise and shall state precisely the relief requested. Motions shall conform to the general motions requirements, standards and practices set forth in the applicable Federal Rules of Procedure and in Local Rule 3.06. Time for the filing of pre-trial motions in criminal cases is governed by Local Rule 44.00.

**4.03: Motions Relating to Discovery and Inspection.** No motions to compel discovery will be considered by the court unless the motion sets forth, by item, the specific question, interrogatory, etc., objected to, along with the grounds supporting or in opposition to the objection. A discovery motion in a criminal action (Rule 16, F.R.Crim.P.) shall state that a request for discovery and inspection was made and denied. Counsel must also certify that there has been a good faith effort to resolve discovery disputes prior to the filing of any discovery motions.

**4.04: Supporting Memoranda.** Except for motions which the clerk may grant as specified in Local Rule 9.00, all motions made other than in a hearing or trial shall be filed with an accompanying supporting memorandum in the manner prescribed by Local Rule 5.01. Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

**4.05: Responses to Motions.** Any party may file a written response to any motion. The response may be a memorandum in the manner prescribed by Local Rule 5.01 and may be accompanied by affidavits and other supporting documents. When the response is not a memorandum, the written response shall be accompanied by a supporting memorandum in the manner prescribed by Local Rule 5.01 and, when appropriate, by affidavits and other supporting documents.

(a) **Non-Discovery Motions:** Responses and accompanying documents shall be filed within 20 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Procedure.

(b) **Discovery Motions:** Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court.

#### **4.06: Replies.**

(a) **Non-Discovery Motions:** Replies to responses are discouraged. However, except as provided in Local Rule 4.06(b), a party desiring to reply to matters initially raised in a response to a motion or in accompanying supporting documents shall file the reply within 10 days after service of the response, unless otherwise ordered by the court.

(b) **Discovery motions:** Replies are not permitted in discovery disputes. See Rule 23.06(b).

**4.07: Subsequently Decided Authority.** A suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon if published or a copy of the opinion if the case is unpublished.

**4.08: Affidavits.** Ordinarily, affidavits will be made by the parties and other witnesses and not by counsel for the parties. However, affidavits may be made by counsel for a party if the sworn facts are known to counsel or counsel can swear to them upon information and belief, and

- (a) the facts relate solely to an uncontested matter; or
- (b) the facts relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the facts; or
- (c) the facts relate solely to the nature and value of the legal services rendered for the party by such counsel or counsel's law firm; or
- (d) the refusal to accept the affidavit would work a substantial hardship on the party and the court finds that its acceptance of the affidavit would not be such as to require that counsel or counsel's law firm be disqualified from continuing to appear for the party.

**4.09: Hearings on Motions.** Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without hearing.

**4.10: Frivolous or Delaying Motions.** Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or counsel filing such motion.

**4.11: Motions for an Extension of Time to Perform an Act.** All motions for an extension of time to perform an act required or allowed to be done within a specified time must show good cause, prior consultation with opposing counsel and the views of opposing counsel. The motion must be accompanied by a separate proposed order granting the motion.

## Rule 5.00

### SUPPORTING MEMORANDA

**5.01: Form and Content.** A memorandum shall be in the form prescribed by Local Rule 3.06 and shall contain:

- (a) a concise summary of the nature of the case;
- (b) a concise statement of the facts that pertain to the matter before the court for ruling;
- (c) the argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations in accordance with Local Rules 5.02, 5.03, and 5.04;
- (d) copies of any decisions in cases cited as required by Local Rules 5.03 and 5.04; and
- (e) where the supporting memorandum opposes a motion for summary judgment a short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

**5.02: Citation of Published Decisions.** Published decisions cited should include parallel citations (except for U.S. Supreme Court cases), the year of the decision, and the court deciding the case. The following are illustrations:

- (a) State Court Citation: *Rawls v. Smith*, 238 N.C. 162, 77 S.E.2d 701 (1953).
- (b) District Court Citation: *Smith v. Jones*, 141 F. Supp. 248 (E.D.N.C. 1956).
- (c) Court of Appeals Citation: *Smith v. Jones*, 237 F.2d 597 (4th Cir. 1956).
- (d) United States Supreme Court Citation: *Smith v. Jones*, 325 U.S. 196, (1956). United States Supreme Court cases should be cited only to the United States Reports except that if a petition for certiorari or an appeal was filed in the United States Supreme Court, the disposition of the case in that court should always be shown. For example: *Carson v. Warlick*, 238 F.2d 724 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957).

**5.03: Citation of Decisions Not Appearing in Certain Published Reports.** Decisions published outside the West Federal Reporter System, the official North Carolina reports and the official United States Supreme Court reports (e.g. CCH Tax Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services) may be cited if the decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed.

**5.04: Citation of Unpublished Decisions.** Unpublished decisions may be cited only if the unpublished decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed. The unpublished decision of a United States District Court may be considered by this court. The unpublished decision of a United States Circuit Court of Appeals will be given due consideration and weight but will not bind this court. Such unpublished decisions should be cited as follows: *United States v. John Doe*, 5:94-50-CR (or CV) (E.D.N.C. January 7, 1994) and *United States v. Norman*, No. 74-2398 (4th Cir. June 27, 1975).

**5.05: Length of Memoranda.** Except as otherwise provided by Local Rule 23.06, memoranda in support of or in opposition to a motion (other than a motion regarding discovery) shall not exceed thirty (30) pages in length without prior court approval. Memoranda in support of or in opposition to a discovery motion shall not exceed ten (10) pages

in length without prior court approval. Reply memoranda (where allowed) shall not exceed ten (10) pages in length without prior court approval. These limitations apply to memoranda submitted in connection with an appeal in a bankruptcy proceeding.

## **Rule 6.00**

### **JURORS**

**6.01: Jury Lists.** When the jury for a session of the court is drawn, the clerk shall furnish a copy of the list to members of the bar of this court upon their request therefor. The list shall set out the name, address, occupation and employer of each juror and, where available, the name, address, occupation and employer of the spouse of each juror. The jurors and their families shall not be contacted, either directly or indirectly, in an effort to secure information concerning the background of any member of the jury panel. When the jurors are seated in the jury box, a chart or list shall be furnished by the clerk to the parties or their counsel, showing the name and seating assignment of each juror.

**6.02: Examination of Jurors.** The court shall conduct the examination of prospective jurors. Counsel shall file prior to trial a list of any *voir dire* questions counsel desires the court to ask the jury other than routine questions such as (1) the occupations and addresses of jurors and their spouses, (2) the identity and relation of jurors, the parties, counsel and witnesses and (3) the knowledge of the jurors concerning the case.

**6.03: Contact with Trial Jurors.** Following the discharge of a jury from further consideration of a case, no attorney or party litigant shall individually or through an investigator or any person acting for such attorney or party litigant ask questions of or make comments to a member of that jury or the members of the family of such a juror that are calculated merely to harass or embarrass such a juror or member of such juror's family or to influence the actions of such a juror or a member of such juror's family in future jury service.

## **Rule 7.00**

### **RELEASE OF INFORMATION TO NEWS MEDIA**

**7.01: Court Personnel.** All court personnel, including but not limited to, the marshal and deputy marshals and office personnel, the clerk and deputy clerks and office personnel, probation officers and office personnel, bailiffs, court reporters, and the judges' and magistrate judges' office personnel, are prohibited from disclosing to any person, where it can reasonably be expected to be disseminated by means of public communication, without authorization of the court, information relating to any pending matter, civil or criminal, that has not been filed as a part of the public records of the court. This proscription applies to the divulgence of any information concerning arguments and hearings held in chambers or otherwise outside the presence of the jury or the public.

**7.02: Copies of Public Records.** The members of the news media and others may obtain copies of all public records from the clerk upon payment of copying fees as prescribed by the Judicial Conference of the United States.

**7.03: Criminal Matters.** In addition to the provisions of this Local Rule 7.00, the provisions of Local Rule 45.00 shall apply to all criminal matters.

## **Rule 8.00**

### **PHOTOGRAPHING AND REPRODUCING COURT PROCEEDINGS**

The taking of photographs, broadcasting or recording of proceedings in any form in the courtroom, court offices or in the corridors immediately adjacent thereto, during judicial proceedings or during any recess of the court is prohibited except as set forth below. The taking of photographs, broadcasting or recording of ceremonial proceedings, such as naturalization proceedings, the administration of oaths of office to officers of the court, presentation of portraits and other ceremonial occasions may be allowed with the permission of the presiding judge and under the supervision and control of the court.

## Rule 9.00

### POWERS AND DUTIES OF THE CLERK

**9.01: Approval of Security.** The clerk or deputy clerk is authorized to approve all recognizances, stipulations, bonds, guaranties, or undertakings, in the penal sum prescribed by statute or order of the court, whether the security be property, or personal or corporate surety.

**9.02: Seizure of Person or Property.** All acts and duties pertaining to the seizure of person or property as provided by the law of the State of North Carolina authorized to be done by a judge or the clerk of the state court may be done in like cases by a judge of this court or the clerk of this court, respectively.

**9.03: Orders and Judgments.** The clerk or deputy clerk is authorized to enter the orders and judgments listed below without further direction of the court. However, such action may be suspended, altered or rescinded by the court for cause shown.

- (a) Consent orders for substitution of attorneys.
- (b) Orders enlarging time periods in civil actions authorized to be entered by the court by Rule 6(b), F.R.Civ.P.
- (c) Orders extending for a reasonable amount of time the period within which an act must be performed under the local rules of this court.
- (d) Consent order dismissing an action, except in bankruptcy proceedings and in cases to which Rule 23(c) F.R.Civ.P. and Rule 66, F.R.Civ.P. apply.
- (e) Orders canceling liability on bonds.
- (f) Orders changing the time of opening and adjourning court in the absence of the judge.
- (g) Judgments by default as provided for in Rule 55(a) and 55(b)(1), F.R.Civ.P.
- (h) Orders authorizing service of process by a person other than a United States Marshal pursuant to Rule 4(c), F.R.Civ.P.
- (i) Certification of law students and supervising attorneys pursuant to Local Rule 13.00.
- (j) Any other motion, rule or order which may be granted of course or without notice.
- (k) Pursuant to the provisions of 28 U.S.C. § 956, the clerk or a deputy clerk, when there is need to serve a complaint and attachment upon a vessel, or any other process incident to admiralty and maritime claims, either *in rem* or *in personam*, are empowered to grant and enter an order authorizing any sheriff or any deputy sheriff, or other suitable person, to serve all such process.

**9.04: Handling of Exhibits.** The clerk shall be the custodian of all exhibits admitted into evidence. Upon ten days notice by mail to counsel for all parties, the clerk may, within 30 days after the entry of final judgment, destroy or otherwise dispose of the exhibits.

**9.05: Deposit of Registry Funds in Interest-Bearing Accounts.** Whenever an order of court directs the clerk to place registry funds into interest-bearing accounts, counsel shall confer with the clerk, within five days after receipt of the order, concerning the manner and place of investment. If counsel and the clerk do not agree, the clerk shall seek further direction from the court. No officer or employee of this court shall incur any liability for failure to invest or for improper investment unless counsel have complied with their obligations under this local rule.

**9.06: Court Libraries.** The clerk shall maintain the court libraries in the district. Use of the facilities is limited to judicial officers, court staff and members of the bar of this court. Books shall not be removed from the library without the consent of the person responsible for the maintenance of the particular library, and shall not be removed from the courthouse under any circumstances. A violation of this rule shall be punishable as for contempt of court.

**9.07: Jurisdictional Agreements With Other Courts.** The clerk shall maintain all jurisdictional agreements entered into by the Chief District Judge of this court and the Chief District Judge of any other United States District Court and a copy of such agreements shall be furnished to counsel upon request.

**9.08: Handling of Sealed Documents.** A party desiring to file material under seal must first file a motion seeking leave to file the information under seal. At the time the motion to file the material under seal is filed, the proposed sealed material shall be stamped received and placed in a locked file cabinet. If the motion to file material under seal is allowed, the sealed material shall be filed nunc pro tunc as of the date it was originally received. If the motion to file the material under seal is denied, the movant will be given an option of retrieving the material or having it filed publicly nunc pro tunc as of the date it was originally received. When the material is filed under seal, the docket will indicate generically the type



of document filed under seal but it will not contain a description that would disclose its identity. After the case is closed and all appeals have concluded, counsel shall retrieve the sealed documents. Upon ten days notice by mail to counsel for all parties, the Clerk may, within 30 days after entry of final judgment, unseal the documents and they will thereafter be available for public inspections.

#### **Rule 10.00**

##### **SURETIES**

**10.01: Security.** Except as otherwise provided by law, every recognizance, stipulation, bond, guaranty, or undertaking shall be with security that consists of either (1) cash or negotiable government bonds, or (2) one or more sureties, as provided by law or the applicable Federal Rules of Procedure. A judge may enter pertinent orders restricting any bonding company or surety company from being accepted as surety upon any bond in any case or matter in this district.

**10.02: Use of Real Property as Security.** Whenever a surety seeks to justify assets by demonstrating ownership of real property, a judge or magistrate judge shall determine by satisfactory evidence that the property is of sufficient unencumbered value to protect the interests of the adverse party.

**10.03: Prohibited Sureties.** Members of the bar, administrative officers and employees of this court, and the marshal and deputies and assistants thereto shall not act as surety in any matter, criminal or civil, pending in this court.

**10.04: Appearance Bond.** In the event a deed of trust is used to secure an appearance bond for a defendant, the grantor of the deed of trust is responsible for preparing and supplying the Clerk with documentation necessary to cancel the deed of trust within 15 days of the date that the conditions of the appearance bond and deed of trust are satisfied. Grantor shall also be responsible for recording any documentation necessary to cancel the deed of trust and for payment of any costs associated with such cancellation. Failure of the Grantor to comply with these requirements shall relieve the Clerk of any responsibility to cancel the deed of trust.

#### **Rule 11.00**

##### **CIVIL RIGHTS ACTIONS BY PRISONERS 42 U.S.C. § 1983**

All complaints on behalf of state prisoners seeking relief under 42 U.S.C. § 1983 and federal prisoners challenging conditions of confinement shall be filed with the clerk in compliance with the instructions of the clerk and on the appropriate form available without charge. An original and one copy of the complaint for the court and one copy of the complaint for each defendant named in the action shall be filed.

#### **Rule 12.00**

##### **HABEAS CORPUS ACTIONS (28 U.S.C. § 2254) AND 28 U.S.C. § 2255 MOTIONS**

All petitions on behalf of prisoners seeking relief under 28 U.S.C. § 2254 and 2255 shall be filed with the clerk in compliance with the instructions of the clerk and on the appropriate form available without charge. Such proceedings shall be governed by the rules promulgated by the United States Supreme Court.

#### **Rule 13.00**

##### **STUDENT PRACTICE RULE**

**13.01: Compliance With Rule.** Students may participate as counsel in civil and criminal cases in this court subject to their compliance with all of the requirements of this Local Rule 13.00.

**13.02: Eligibility.** An eligible student must:

- (a) be duly enrolled in a law school;

- (b) have completed at least three semesters of legal studies;
- (c) have knowledge of the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Code of Professional Responsibility, and the Local Rules of this court;
- (d) be supervised by a supervising attorney as defined in Local Rule 13.03;
- (e) be certified by the Dean of the Law School where the student is enrolled, or the Dean's designee, as being of good character, sufficient legal ability, and adequately trained to fulfill the responsibilities of a legal intern to both the client and the court;
- (f) be certified by the court to practice pursuant to this Local Rule 13.00; and
- (g) decline personal compensation for his or her legal services from a client or any other source.

**13.03: Supervising Attorney.** A supervisor must:

- (a) either (1) have faculty or adjunct faculty status at a law school at which a portion of the supervisor's duties includes supervision of students in a clinical program; or (2) be a member of the bar of this court for at least two years, who in the determination of the court, is competent to carry out the role of supervising attorney;
- (b) be admitted to practice in this court;
- (c) be certified by the court as a student supervisor;
- (d) be present with the student at all times in court, and at other proceedings in which testimony is taken;
- (e) co-sign all pleadings or other documents filed with the court;
- (f) assume full personal and professional responsibility for a student's guidance and any work undertaken and for the quality of the student's work, and to be available for consultation with represented clients;
- (g) assist and counsel the student in activities mentioned in Local Rule 13.05, and review such activities with the student, all to the extent required for proper practical training of the student and the protection of the client; and
- (h) supplement oral or written work of the student as necessary to insure proper representation of the client.

**13.04: Certification of Student and Supervisor.**

- (a) **Student.** The court's certification of a student to practice under this Local Rule 13.00 shall be filed with the clerk and shall remain in effect for 18 months or until the student graduates from law school, whichever is earlier. Certification to appear generally or in a particular case may be withdrawn by the court at any time, in the discretion of the court, and without any showing of cause.
- (b) **Supervising Attorney.** Certification of the supervising attorney shall be filed with the clerk, and shall remain in effect indefinitely unless withdrawn by the court, in its discretion, and without any showing of cause.

**13.05: Activities.** A certified student may under the personal supervision of his or her supervisor:

- (a) represent any client including federal, state or local governmental bodies, if the client on whose behalf the certified student is appearing has consented in writing to that appearance and the supervising lawyer has given written approval of that appearance;
- (b) represent a client in any criminal, civil or administrative matter; however, the court retains the authority to limit a student's participation in any individual case;
- (c) in connection with matters in this court, engage in other activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student shall make no binding commitments on behalf of a client absent prior client and supervisor approval, and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers which are filed shall be read, approved, and co-signed by the supervising lawyer. The court retains the authority to establish exceptions to such activities; and
- (d) prior to oral participation by a certified student in a hearing or trial, the supervising attorney shall provide the court with a written statement of the scope of participation anticipated on the part of the certified student.

## **Rule 14.00**

### **NATURALIZATION**

Petitions for naturalization will be considered and acted upon, and appropriate ceremonies conducted in connection therewith, on Wednesday of the first week of any regular session of court at which naturalization hearings are set, beginning at 2:00 o'clock P.M., unless otherwise ordered by the court. The court may at other times, in its discretion,

for good cause shown, and upon reasonable prior notice by the applicant to the Immigration and Naturalization Service, consider and act upon petitions for naturalization by members of the armed services, seamen on merchant vessels registered under the laws of the United States, and members of the immediate families and dependents of such personnel, and in other exceptional cases.

#### **Rule 15.00**

### **SANCTIONS**

If an attorney or any party fails to comply in good faith with any local rule of this court, the court in its discretion may impose sanctions.

#### **Rule 16.00**

### **TAXATION OF JUROR COSTS**

**16.01: Settlement before Trial.** Whenever a civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs for one day shall be assessed equally against the parties and their counsel or otherwise assessed or relieved as directed by the court. Juror costs include attendance fees, per diem, mileage, and parking. No juror costs will be assessed if notice of settlement or other disposition of the case is given to the court one full business day prior to the scheduled trial date. In asbestos-related litigation, notice must be given to the court five full business days prior to the scheduled trial date.

**16.02: Settlement before Verdict.** Except upon a showing of good cause, the court shall assess the juror costs equally against the parties and their counsel whenever a civil action proceeding as a jury trial is settled at trial in advance of the verdict. The judge may, in his discretion, direct that the juror costs be relieved or that they be assessed other than equally among the parties and their counsel.

#### **Rules 17.00 to 19.00**

Reserved for Future Purposes

### **II. Civil Rules**

#### **Rule 20.00**

### **MINORS AND INCOMPETENTS AS PARTIES**

**20.01: Representation.** Representation of minor and incompetent parties in a civil action shall be in accordance with Rule 17(c), F.R.Civ.P. Appointments of guardians *ad litem* by any state court shall satisfy the requirements of the Federal Rules of Civil Procedure unless the court finds that the interests of the parties so represented are not being adequately protected.

**20.02: Settlement or Dismissal of Actions.** No civil action to which a minor or incompetent person is a party shall be compromised, settled, discontinued, or dismissed without an Order of Approval entered by the court. It shall be the responsibility of counsel for the minor or incompetent parties to prepare a proposed Order of Approval for submission to the court. The Order of Approval shall bear the written consent of (1) counsel for all the parties to the action, (2) the legal representative of minor or incompetent parties, and (3), in the case of minors, at least one of the natural parents or persons standing *in loco parentis*. Unless otherwise ordered by the court, the Order of Approval shall contain statements as to the following:

- (a) that all parties are properly represented and are properly before the court; that no questions exist as to misjoinder or nonjoinder of parties; and that the court has jurisdiction over the subject matter and the parties;
- (b) if the minor or incompetent parties are plaintiffs, a summary of contentions sufficient to show that the complaint

states a claim upon which relief can be granted; if the minor or incompetent parties are defendants, a statement of contentions sufficient to show that no affirmative defenses could clearly be raised in bar of recovery;

(c) a summary of services rendered by counsel for the minor or incompetent parties, along with an opinion as to the fairness and reasonableness of the settlement, if any; and

(d) in cases involving claims for personal injuries asserted by minor or incompetent parties, an estimate of actual and foreseeable medical, hospital and related expenses and a statement by an examining physician setting forth the nature and extent of the plaintiff's injuries, extent of recovery and prognosis.

**20.03: Approval of Counsel Fees and Payment of Judgments.** In its Order of Approval, the court shall approve or fix the amount of the fee to be paid to counsel for the minor or incompetent parties and make appropriate provision for the payment thereof. The Order of Approval shall also provide the manner in which judgments, if any, are to be paid and may make specific provisions for the payment of medical, hospital and similar expenses when allowed by applicable law.

#### **Rule 21.00**

#### **CONSENT OF PARTIES TO CIVIL TRIAL JURISDICTION OF MAGISTRATE JUDGES**

(a) Unless the judge to whom a civil action is assigned directs otherwise, the clerk shall routinely assign to a magistrate judge cases in which all parties consent to the exercise of civil trial jurisdiction pursuant to 28 U.S.C. § 636(c).

(b) Appeals from a judgment of a magistrate judge pursuant to 28 U.S.C. § 636(c)(4) shall lie to the judge to whom the case was originally assigned.

#### **Rule 22.00**

#### **SUBSEQUENT LITIGATION BY PARTIES PROCEEDING IN FORMA PAUPERIS**

A plaintiff who has proceeded unsuccessfully *in forma pauperis* and had the costs of that litigation taxed against him must demonstrate that he has paid or made a reasonable effort to pay those costs prior to being authorized to proceed again *in forma pauperis*.

#### **Rule 23.00**

#### **CIVIL DISCOVERY**

**23.01: Conducting Discovery.** In all civil actions, the parties shall schedule and conduct discovery in accordance with the order entered pursuant to Rule 16, F.R.Civ.P. All discovery motions and requests shall be propounded so as to allow the respondent sufficient time to answer prior to the time when discovery is scheduled to be completed. To shorten discovery time, it is expected that discovery procedures will proceed concurrently. After the time for completing discovery has expired, further discovery may proceed only by order of the court and may, in no event, interfere with the conduct of either the final pre-trial conference or the trial.

**23.02: Numbering Discovery Procedures.** Each time a particular discovery procedure is used, it shall be sequentially numbered (e.g., "First Set," "Second Set," "First Request," "Second Request," etc.) so that it will be distinguishable from a prior procedure.

**23.03: Form of Interrogatories, Responses and Objections.** All interrogatories shall be served on opposing counsel. Counsel are encouraged to serve three copies of all interrogatories on counsel for the respondent and provide sufficient space following each question in which the respondent may state the response. Alternative methods of facilitating a response, such as requiring interrogatories on a diskette, may be agreed to by counsel. The requirement for use of cover sheets is also eliminated. If the space provided is not sufficient, additional pages shall be attached. An objection to an interrogatory shall be made by stating the objection and the reason therefore in the space provided for the response. Before serving the interrogatories containing the responses and objections, if any, the responding party shall attach thereto a cover sheet containing a statement (1) that each response separately and fully answers each interrogatory,

except those to which objections are made, and (2) the capacity, if any, in which such respondent is acting, which statement shall be signed and verified by the respondent. Where there are objections, there shall be attached to the interrogatories a second sheet, signed by counsel making such objection, stating the number of each such interrogatory and incorporating by reference the reason stated for each objection.

**23.04: Depositions for Use at Trial.** Depositions de bene esse may be taken outside of the period of discovery.

**23.05: Deposition Exhibits.** The parties are encouraged to mark all deposition exhibits consecutively during discovery without reference to the deposition taken or the party using the exhibit.

**23.06: Discovery Disputes - Expedited Briefing Schedule.** Any motion relating to a discovery conflict shall be handled on an expedited basis:

(a) Memoranda in support or in opposition to a discovery motion shall not exceed ten (10) pages in length.

(b) Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court.

(c) Replies are not permitted in discovery disputes.

(d) In any instance in which oral argument is scheduled, counsel shall be given the option of oral presentations by telephone in lieu of a live appearance.

**23.07: Exception from Rule 26(a)(1), F.R.Civ.P.** The provisions of F.R.Civ.P. 26(a)(1) (December 1, 1993) shall not be applicable to civil actions in this Court. Any references to F.R.Civ.P. 26(a)(1) in other portions of the Rules of Civil Procedure may be disregarded. As a result of the Court's election not to follow F.R.Civ.P. 26(a)(1), the following rules are adopted to implement the Rules of Civil Procedure:

a) The parties may, at their option, initiate discovery, in any form, before the parties have met and conferred as required by F.R.Civ.P. 26(f). If written discovery, in the form of interrogatories, requests for admission, or requests for production of documents, is served with the summons and complaint, then, in that instance, answers, objections, or written responses to any of said forms of discovery shall be served within 45 days after service of the summons and complaint on the defendant receiving such discovery.

b) Through appropriate written discovery, a party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment. The discovery permitted shall include inspection and copying of such agreement pursuant to F.R.Civ.P. 34. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subparagraph, an application for insurance shall not be treated as part of an insurance agreement.

c) In accordance with F.R.Civ.P. 16(b), this Court will routinely issue a request for a discovery plan and will thereafter enter a scheduling order. The planning meeting of counsel required by F.R.Civ.P. 26(f) and the report of counsel contemplated by said rule are a mandatory part of the process of formulating a scheduling order. A report in the form hereinafter set forth shall be sufficient to comply with F.R.Civ.P. 26(f), although the parties may include greater detail or additional topics. If the parties cannot agree on a joint report, each party shall file a separate Rule 26(f) report setting forth its position on disputed matters. The parties may include in their report an agreement to mediate and a proposed time table for conducting that mediation.

## **Rule 24.00**

### **FINAL CIVIL PRE-TRIAL CONFERENCE**

**24.01: Scheduling and Notice.** A final pre-trial conference shall be scheduled in every civil action after the time for discovery has expired. The Clerk shall give at least 25 days notice of such conference.

In the Court's discretion and upon request of any party or on the Court's own initiative, a preliminary or "working" pre-trial conference may be scheduled.

**24.02: Preparation by Counsel for Final Pre-Trial Conference.** At least ten days prior to the final pre-trial conference, trial counsel for each of the parties shall confer and prepare a proposed final pre-trial order. It shall be the duty of counsel for the plaintiff to arrange for this conference. In complex cases, counsel are encouraged to exchange designations and other pretrial materials in advance of the meeting between counsel. Where video depositions are to be used, parties should endeavor to reach early agreement on editing; where agreement cannot be reached, required

rulings by the court should be sought in sufficient time to allow for final edited versions of depositions to be used at trial. In the absence of an agreement to the contrary, the conference of attorneys shall be held in the office of the attorney nearest the headquarters of the division to which the action has been assigned. Each counsel shall bring to the conference copies of exhibits to be introduced into evidence, lists of witnesses to be called, and designations of discovery material to be used at trial including reference to specific page and line numbers. Counsel should make a good faith effort to include only those portions of depositions and other discovery material which may be introduced into evidence. To the extent this local rule is in conflict with F.R.C.P. 26(a)(3), this rule shall take precedence.

**24.03: Form of Pre-Trial Order.** The pre-trial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in five separate sections, numbered by roman numerals, as indicated:

(a) **I. Stipulations.** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.

(b) **II. Contentions.** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pre-trial order are deemed abandoned.

(c) **III. Exhibits.** A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Rule 24.02. The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pre-trial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pre-trial order. When practicable, trial exhibits should carry the same number as in the depositions and references to exhibits in depositions should be changed to refer to the trial exhibit number. It is not necessary to designate exhibits that are to be used solely for impeachment or cross-examination.

(d) **IV. Designation of Pleadings and Discovery Materials.** The designation by line and page of all portions of pleadings and discovery materials, including depositions, interrogatories and requests for admission that each party may offer at trial by reference to document volume, page number, and line. Objection by opposing counsel shall be noted by document volume, page number and line, and reasons for such objections shall be stated. It is not necessary to designate a deposition, any other discovery material, or any portion of a deposition, that is to be used solely for impeachment or cross-examination.

(e) **V. Witnesses.** A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

**24.04: Conduct of the Final Pre-Trial Conference.**

(a) Purpose. To resolve any disputes concerning the contents of the pre-trial order.

(b) Counsel shall be fully prepared to present to the court all information and documentation necessary for completion of the pre-trial order. Failure to do so shall result in the sanctions provided by this rule.

(c) Sanctions. Failure to comply with the provisions of Rule 24.04(b) may result in the imposition of a monetary fine not to exceed \$250.00 against the offending counsel and may result in any other sanction allowable by the Federal Rules of Civil Procedure against the parties or their counsel.

(d) Counsel for all parties shall be responsible for preparing the final pre-trial order and presenting it to the Court properly signed by all counsel at a time designated by the Court. Upon approval by the Court, the original shall be filed with the Clerk. Failure to provide a unified pre-trial order may result in sanctions being imposed against all parties to the action.

(e) To the extent this local rule is in conflict with F.R.C.P. 26(a)(3), this rule shall take precedence.

**24.05: Sample Pre-Trial Order.** A pre-trial order in the following form shall be sufficient to comply with these rules:

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. \_\_\_\_-CV-\_\_\_\_-\_\_(\_)

JOHN DOE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PRE-TRIAL ORDER
	)	
XYZ CORPORATION,	)	
	)	
Defendant.	)	

Date of Conference: August 12, 1998

Appearances: John Y. Lawyer, Raleigh, North Carolina for plaintiff;  
Sam X. Attorney, Fayetteville, North Carolina for defendant.

**I. STIPULATIONS.**

- A. all parties are properly before the court;
- B. the court has jurisdiction of the parties and of the subject matter;
- C. all parties have been correctly designated;
- D. there is no question as to misjoinder or nonjoinder of parties;
- E. plaintiff, a minor, appears through his guardian;
- F. Facts:
  - 1. Plaintiff is a citizen of Wake County, North Carolina.
  - 2. Defendant is a New York corporation, licensed to do business and doing business in the State of North Carolina.
- G. Legal Issues:

May a nine-year old minor be guilty of contributory negligence?
- H. Factual Issues:
  - 1. Was plaintiff injured and damaged by the negligence of the defendant?
  - 2. What amount, if any, is plaintiff entitled to receive of defendant as compensatory damages?

**II. CONTENTIONS.**

- A. Plaintiff
  - 1. Facts:
    - (a) That Richard Roe was driving defendant's truck as defendant's agent.
    - (b) That Richard Roe was negligent in that he drove at an excessive speed and while under the influence of intoxicating liquor.
  - 2. Factual Issues:

What amount, if any, is plaintiff entitled to recover of defendant as punitive damages?
- B. Defendant
  - 1. Facts:

That Richard Roe, a former employee, took defendant's truck without authorization and, at the time of the accident, was not the agent or employee of defendant.

2. Factual Issues:

Did plaintiff, by his own negligence, contribute to his injury and damage?

III. EXHIBITS.

A. Plaintiff

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Patrol Report	Hearsay
2	Photo of Plaintiff	

B. Defendant

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Photo of Scene	
2	Scale Model	

IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS

A. Plaintiff

<u>Document</u>	<u>Portion</u>	<u>Objection</u>	<u>Reason</u>
Plaintiff's first set of interrogatories	Nos. 1,8 and 9	No. 8	Privilege
Deposition of Richard Roe	Vol. 1, line 6, p. 1 thru line 5, p. 6	Line 6, p. 1 thru line 2, p. 7	Hearsay

B. Defendant

None

V. WITNESSES

A. Plaintiff

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
John Jones	615 Rains Street Raleigh, N.C.	Facts surrounding accident, extent of
Frank Flake Joe Rock	Selma, N.C. Temple, AR.	Speed of defendant's vehicle, intoxication of driver

B. Defendant

All witnesses listed by plaintiff.

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
Sam Smith	4 Appian Way	Facts surrounding the



Rome, Italy

theft by driver  
of the vehicle

TRIAL TIME ESTIMATE: \_\_\_\_\_ days

---

JOHN Y. LAWYER  
Counsel for Plaintiff

---

SAM X. ATTORNEY  
Counsel for Defendant

APPROVED BY:

---

BILL JONES  
U.S. MAGISTRATE JUDGE

\_\_\_\_\_, 1998

#### **Rule 25.00**

##### **ATTORNEY PREPARATIONS FOR CIVIL TRIAL**

Five business days preceding the first day of the session at which a civil action is set for trial, counsel for all parties shall file with the clerk:

**25.01: In All Cases.**

- (a) A concise memorandum of authorities on all anticipated evidentiary questions and on all contested issues of law;
- (b) Motions relating to the admissibility of evidence; however, no party shall be required to file a written response to a motion in limine which is filed after the pre-trial conference has taken place..

**25.02: In Jury Cases.**

- (a) A list of all *voir dire* questions as required by Local Rule 6.02;
- (b) Requests for Jury Instructions. Requests using Devitt & Blackmar (3d Ed.), 5th Circuit Pattern Instructions, and North Carolina Pattern Instructions shall include both the text of the proposed instruction as well as a citation reference to the proposed instruction. All other requests shall contain citations to supporting authorities.

**25.03: In-Non-Jury Cases.** Proposed findings of fact and conclusions of law.

**25.04: Late Developments in the Case.** Counsel shall immediately inform the court, opposing counsel and counsel in the next succeeding two cases on the calendar of any settlement or of any developments of an emergency which may necessitate a motion for continuance.

#### **Rule 26.00**

##### **CIVIL TRIALS**

**26.01: Opening Statements.** At the beginning of the trial, each party (beginning with the party having the burden

of proof on the first issue) shall, without argument and in such reasonable time as the court allows, state to the court and the jury the following:

- (a) the substance of the claim, counterclaim, cross claim or defense; and
- (b) what counsel contends the evidence will show. Parties not having the burden of proof on the first issue may elect to make an opening statement immediately prior to presenting evidence, rather than at the beginning of the trial.

**26.02: Witnesses.** Counsel may not release a person from a subpoena without notice to opposing counsel and leave of court. A party objecting to the release of a person shall bear all costs incident to such person which arise subsequent to the request for release. The court may, in its discretion and in the interest of justice, permit a party to call and examine a witness not listed in the final pre-trial order.

**26.03: Exhibits.**

(a) All exhibits shall be premarked with stickers obtained from the clerk's office with the sequential numbers as listed in the pre-trial order. Each exhibit introduced at trial shall contain the case number of the action on the exhibit sticker and a party designation where there are differing plaintiffs and defendants introducing exhibits.

(b) Copies of all exhibits, properly bound, shall be provided to the court at the beginning of the trial.

(c) The original exhibit shall bear a sticker. After receipt into evidence, it shall remain in the custody of the courtroom deputy, except when being used by a witness or viewed by the jury.

(d) Copies of all exhibits shall bear the photostatic image of the sticker or a typed or printed reproduction thereof.

(e) Counsel are encouraged to provide one or more copies of exhibits for use by the jury.

(f) Upon presentation of an exhibit to a witness, counsel shall announce to the court the exhibit number. The exhibit shall not be handed to opposing counsel. Should opposing counsel contend that a copy has not been provided or that the exhibit has been lost or misplaced, that shall be brought to the attention of the court.

**26.04: Closing Argument.** The court will set the times for closing argument after consultation with parties. Unless otherwise ordered by the court, the party with the burden of proof shall open and close the arguments. The opening argument may not be waived.

**26.05: Taking Verdicts and Polling the Jury.** The court may take the verdict of the jury in open court in the absence of any party or counsel. Unless the contrary affirmatively appears of record, it will be presumed that the parties were present or by their voluntary absence waived their presence. The jury will not be polled unless a party requests a poll at the time the verdict is taken or unless a poll is ordered by the court.

## **Rule 27.00**

### **CIVIL CONTEMPT**

**27.01: Rights of Contemnor.** In all cases of civil contempt, the contemnor shall have due notice of the contempt charges, opportunity to reply to the charges and notice of the date and place of hearing in open court from which the public shall not be excluded.

**27.02: Summary Contempt Proceedings.** In contempt proceedings where the court may act summarily, the contemnor shall have the right to defend against the charges and to offer evidence in the form of affidavits. The movant shall have the right to offer similar evidence.

**27.03: Plenary Contempt Proceedings.** In contempt proceedings where the court may not act summarily, the presentation of evidence is governed by Rule 1101 of the Federal Rules of Evidence. In no case of civil contempt, however, shall the parties be entitled to trial by jury, but rather the district judge before whom the matter is tried shall find the facts and enter a judgment or order in accordance with the provisions of the Federal Rules of Civil Procedure applicable to non-jury cases.

## **Rule 28.00**

### **APPLICATION FOR COSTS**

All applications for costs must be made within 14 days after entry of judgment. Objections to applications for costs must be filed within 10 days after service of the application for costs. Replies are discouraged.

## **Rule 29.00**

### **EXCEPTIONS FROM DISCOVERY PROVISIONS**

F.R.Civ.P. 26(f) shall not apply to the following types of cases: prisoner civil rights and habeas corpus actions, bankruptcy appeals, social security appeals, and asbestos litigation.

### **III. Alternative Dispute Resolution**

## **RULE 30.00**

### **COURT-HOSTED SETTLEMENT CONFERENCES**

The Court, upon its own initiative or at the request of any party, may order a settlement conference at a time and place to be fixed by the Court. Upon request by all parties to an action, the Court shall order a settlement conference. A District Judge other than the Judge assigned to the case, or a Magistrate Judge, will normally preside at such a settlement conference. At least one attorney for each of the parties who is fully familiar with the case shall attend the settlement conference for each party. Each individual party or a representative of a corporate or governmental agency party with full settlement authority also shall attend the settlement conference. Other interested parties, such as insurers, shall attend through fully authorized representatives and are subject to the provisions of this Rule. The settlement conference Judge or Magistrate Judge may, however, upon prior written application, allow a party or representative having full settlement authority to be telephonically available. The parties, representatives and attorneys are required to be completely candid with the settlement conference Judge or Magistrate Judge so that he or she may properly guide settlement discussions. The Judge or Magistrate Judge presiding over the settlement conference may make such other and additional requirements of the parties and conduct the proceedings as shall seem proper to the Judge or Magistrate Judge in order to expedite an amicable resolution of the case. The settlement Judge or Magistrate Judge will not discuss the substance of the conference with anyone, including the Judge to whom the case is assigned, and may excuse the parties or the attorneys from the conference any time. During the settlement conference, the settlement Judge or Magistrate Judge also may confer ex parte with any parties, representatives or attorneys, to meet jointly or individually with the parties and/or representatives without the presence of counsel, and to elect to have the parties and/or representatives meet alone without the presence of the settlement Judge or Magistrate Judge or counsel with the specific understanding that any conversation relative to settlement will not constitute an admission and will not be used in any form in the litigation or in the event of trial.

## RULE 31.00

### SUMMARY TRIALS

**31.01: Eligible Cases.** The assigned Judge may, after consultation with counsel, refer for summary jury trial any civil case in which jury trial has been properly demanded. Either or both parties may move the Court to order summary jury trial; however, the Court will not require a party to participate against its will.

**31.02: Selection of Cases.** Cases selected for summary jury trial should be those in which counsel feel that a non-binding verdict by the jury could be helpful in a subsequent settlement negotiation. Since an investment of time by counsel and by the Court is necessary for the procedure, it should be used only in those cases that would take more than seven (7) trial days to try.

**31.03: Procedural Considerations.** Summary jury trial is a flexible ADR process. The procedures to be followed should be determined by the assigned Judge in advance of the scheduled summary jury trial date, in light of the circumstances of the case and after consultation with counsel. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

a. **Presiding Judge.** Either a District Judge or a Magistrate Judge may preside over a summary jury trial. During the process, the summary jury trial judge will ordinarily participate in on-going settlement negotiations and may have ex-parte conferences with each side. For this reason, normally a judge other than the trial judge will be selected to preside over the summary jury trial.

b. **Submission of Written Materials.** Counsel must submit proposed jury voir dire questions, jury instructions and briefs on any novel issues of law within three (3) working days before the date set for summary jury trial. In addition, counsel may also choose to submit other items, such as a statement of the case, stipulations, and exhibit lists.

c. **Attendance.** Summary jury trials are effective in promoting settlement because, among other reasons, they give parties their "day in court" (meeting a need to voice their position in a public forum), and because they allow parties to see the merits of their opponent's position. It is therefore critical that the parties and all other persons or entities involved in the settlement decision attend the summary jury trial. This includes all individual parties and representatives of corporations and other parties and insurers vested with full settlement authority. Since absence of any decision maker makes the process less likely to proceed, this attendance requirement can be waived only by order of the Court.

d. **Size of jury panel.** The jury shall consist of 6 to 12 members.

e. **Voir dire.** Each counsel may exercise a maximum of 2 peremptory challenges. There will be no alternate jurors. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the Court.

f. **Transcript or recording.** Upon consent of the parties, counsel may arrange for the proceedings to be recorded by a court reporter at his or her own expense. However, no transcript of the proceedings will be admitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

g. **Conference between counsel.** Prior to trial, counsel are to confer with regard to the use of physical exhibits, including documents and reports, and reach such agreement as is possible. Prior to the day of the summary jury trial, the court will hear all matters in dispute and make appropriate rulings.

h. **Timing.** The summary jury trial should take no more than 1 and ½ days from jury selection to jury deliberation. In consultation with counsel before the summary jury trial, the Court shall establish a scheme of time allotment for presentations by counsel.

i. **Case presentations.** The attorney presentations shall be organized in the manner of a typical trial, except that no witness testimony will be allowed, absent the court's permission. First, the plaintiff shall present an opening statement, followed immediately by defendant's opening statement. Next, plaintiff and defendant shall present their cases-in-chief by informing the jury in more detail than the opening statement who the witnesses are and what their testimony would be. Finally, the plaintiff and then defendant will make closing arguments to the jury. Plaintiff may present a final rebuttal if his or her presentation time limit has not expired. The parties are free to divide their allotted time among the three trial segments as they see fit.

j. **Manner of presentation.** All evidence shall be presented through the attorneys for the parties. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses; however, no witness' testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon

a written, sworn statement of the witness, or upon sworn affidavits of counsel that the witness would be called at trial and will not sign an affidavit, and that counsel has been told the substance of the witness' proposed testimony by the witness. Demonstrative evidence, such as videotapes, charts, diagrams, and models may be used unless the Court finds, on objection, that this evidence is neither admissible nor accurately reflects evidence which is admissible.

k. **Objections.** Formal objections are discouraged. Nevertheless, in the event counsel makes a representation not supported by admissible evidence, an objection will be entertained. If such an objection is sustained, the jury will be instructed appropriately.

l. **Jury instructions.** Jury instructions will be given in an abbreviated form, adapted to reflect the nature of the proceeding. The jury will be instructed to return a unanimous verdict, if possible. Barring unanimity, the jury may be instructed to submit a statement of each juror's findings.

m. **Jury deliberations.** Jury deliberations should be limited in time.

n. **Settlement negotiations.** While the summary jury is deliberating, the presiding Judge should direct the parties to meet and explore settlement possibilities. The Judge may participate in this process.

o. **Continuances.** The proceedings may not be continued or delayed other than for short recesses at the discretion of the Court.

p. **Final Determination.** Although ordinarily non-binding in nature, counsel may stipulate among themselves that a consensus verdict by the summary jury will be a final determination on the merits of the case and judgment may be entered thereon by the Court. In addition, counsel may stipulate to any other use of the verdict that will aid in resolution of the case. For example, the parties should consider a bracketed settlement with specific minimum and maximum settlement amounts and being bound by the summary jury's verdict within the brackets.

q. **Trial.** If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

r. **Limitation on admission of evidence.** The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

- (1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or
- (2) The parties have otherwise stipulated.

s. **Purpose.** These rules shall be construed to secure the just, speedy, effective, and inexpensive conclusion of the summary trial procedure. Bearing in mind that the summary jury trial should be flexible to meet the needs of any case in which it is used, the Judge presiding over the procedure may modify or disregard any of these rules and fashion instead an alternative deemed more likely to produce settlement.

**31.04: Non-Jury Summary Trials.** The Assigned Judge may, after consultation with counsel, refer any civil case for summary non-jury trial. Either or both parties may move the court to order summary non-jury trial; however, the Court will not require a party to participate against its will. The procedure for a summary non-jury trial shall be directed by the Court on a case-by-case basis.

## **RULE 32.00**

### **MEDIATED SETTLEMENT CONFERENCES**

**32.01: Definition.** Mediation is a supervised settlement conference presided on by a qualified, certified and neutral mediator to facilitate and promote conciliation, compromise and the ultimate resolution of a civil action.

**32.02: Referral.** The Court may at the request of the parties, order any action, or portion thereof, to be referred for a mediated settlement conference.

**32.03: Motion to Dispense with Mediation.** A party may move, within 10 days after the Court's order referring an action, or portion thereof, to mediation, to dispense with or defer the conference. The Court shall grant the motion only for good cause shown.

**32.04: Referral Order.** The Court's order referring a civil action for a mediated settlement conference shall:

- (1) require the mediated settlement conference be held in the case,
- (2) establish a deadline for the completion of the conference,
- (3) appoint a mediator, and

(4) state the rate of compensation of the appointed mediator.

Provided, however, in lieu of appointing a mediator in the referral order, the Court may direct the parties to notify the Court, within fourteen days of the entry of the Order referring the action for a mediated settlement conference, of the nomination of a mediator agreeable to all parties, together with the rate of the mediator's compensation. Upon notification of a mutually agreeable mediator, the Court will appoint the mediator nominated by the parties at the agreed date, unless the Court finds the mediator nominated is not qualified by training or experience to mediate all or some of the issues in the action. In the event of the failure of the parties to nominate a mediator within fourteen days, the Court shall appoint the mediator and state the rate of compensation of the appointed mediator.

**32.05: Mediators.** The Court may appoint as mediator any person certified as provided in Local Rule 32.06.

**32.06: Certified Mediators.**

(a) **Certification of Mediators.** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any certified mediator at any time.

(b) **List of Certified Mediators.** Lists of certified mediators shall be maintained in each division of the Court and shall be made available to counsel and the public upon request.

(c) **Qualifications of Certified Mediators.** An individual may be certified to serve as a mediator if:

- (1) He or she is a former state judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or
- (2) He or she is a retired federal judicial officer; or
- (3) He or she has been certified as a mediator by the State of North Carolina Dispute Resolution Commission pursuant to the Rules Implementing Court Ordered Mediated Settlement Conferences adopted by the Supreme Court of North Carolina pursuant to N.C.G.S. § 7A-38(d); or
- (4) He or she has been a member of the North Carolina Bar for at least 10 years and is currently admitted to the Bar of this Court.

(d) **Oath Required.** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator.** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

(f) **Compensation of Mediators.** Mediators shall be compensated at the rate provided by standing order of the Court, as amended from time to time by the chief judge. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediated settlement conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement.** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases.** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

**32.07: The Mediated Conference.**

(a) **Where Conference Is to Be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in a United States District Courthouse. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) **When Conference Is to Be Held.** Unless otherwise ordered by the Court, the mediated settlement conference shall begin no later than 60 days after the court's referral order. It shall be completed within 30 days after it has begun.

(c) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** The mediated settlement conference shall not be cause for the delay of other proceedings in this case, including the completion of discovery, the

filing or hearing of motions, or the trial of the case, except by order of the Court.

(e) **Memoranda.** Each party may, at any time after appointment of the mediator, provide the mediator with a memoranda presenting his contentions and positions. The memoranda need not be served on other parties.

(f) **Preparation.** All parties shall be prepared to discuss, in detail and in good faith, the following:

- (1) all liability issues;
- (2) all damage issues; and
- (3) his or her position relative to settlement.

(g) **Settlement Documentation.** In the event settlement is reached at the mediated settlement conference, the essential terms and conditions of the settlement should be noted and signed or initialed by all parties and/or counsel before departing the conference. More formal documentation may be prepared later on an agreed timetable if appropriate.

(h) **Proceedings Privileged.** All proceedings of the mediated settlement conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be binding upon all parties to the agreement.

### **32.08: Attendance at Mediated Settlement Conference.**

(a) The following persons shall physically attend a mediated settlement conference:

- (1) All individual parties; or an officer, director or employee having authority to settle on behalf of a corporate party; or, in the case of a governmental agency, a representative of that agency with full authority to settle on behalf of the agency;
- (2) The party's counsel of record, if any; and
- (3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

(b) In the event any party desires to be represented at the settlement conference other than as provided in Local Rule 32.08(a), the party shall promptly apply to the Mediator for leave to appear otherwise. Said application shall be delivered (not filed) to the mediator not later than eleven (11) days prior to the conference and shall contain:

- (4) The reasons which make it impracticable for a party or a party's representative to appear;  
as required by Local Rule 32.08(a);
- (5) a detailed description of the authority to be exercised at the conference; and
- (6) alternative proposals by which full authority may be exercised at the conference.

Such application shall be made only after all other alternatives have been, in good faith, considered and rejected. The application need not be transmitted to the opposing parties. Upon consideration of the application, the mediator, in his discretion, may excuse a party or representative from attending the settlement conference, may allow a party or representative to be available by telephone during the conference, to appear with limited authority or may, notwithstanding the application, require appropriate persons to appear as may be necessary to have full settlement authority at the conference.

### **32.09: Authority and Duties of Mediator.**

(a) **Authority of Mediator.** The mediator shall, at all times be in control of the mediated settlement conference and the procedures to be followed subject to the orders of the Court and this Rule.

(b) **Duty of Impartiality.** The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on his or her possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. § 144 and shall disqualify themselves in any action in which they would be required under Title 28 U.S.C. § 455 to disqualify themselves if they were a judge or magistrate judge. Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) **Duties at Conference.** The mediator shall define and describe the following to the parties at the beginning

of mediated settlement conference:

- (1) The process of mediation.
- (2) The differences between mediation settlement conference and other forms of conflict resolution.
- (3) The costs of the mediated settlement conference.
- (4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement.
- (5) The circumstances under which the mediator may meet alone with either of the parties or with any other person.
- (6) Whether and under what conditions communications with the mediator will be held in confidence during the conference.
- (7) The inadmissibility of conduct and statements as provided by Rule 408 of the Rules of Evidence.
- (8) The duties and responsibilities of the mediator and the parties.
- (9) The fact that any agreement reached will be reached by mutual consent of the parties.

(d) **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference.

(e) **Declaring Impasse.** It is the duty of the mediator to timely determine when mediation is not viable, that an impasse exists, or that mediation should end.

(f) **Reporting Results of Conference.** The mediator shall report to the Court in writing within 5 days of the conclusion of the mediated settlement conference. The report shall include the parties attending the conference, and whether or not an agreement was reached by the parties. If an agreement is reached, the report shall state whether the action will conclude by consent judgment or voluntary dismissal and shall identify the person designated to file such a consent judgment or dismissal. If an agreement is not reached, the report shall state whether or not there has been compliance with the mediation requirements of this Rule and if not, in what respects compliance was not met.

**Rule 32.10: Sanctions.** In the event a party fails to attend or to participate in good faith in a mediated settlement conference ordered by the Court without good cause, the Court may impose upon the party any lawful sanction, including but not limited to assessments of attorney fees, mediator fees and expenses, expenses incurred by parties attending the conference, contempt, or any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

**Rule 32.11: Judicial Immunity.** A mediator appointed by the Court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

#### **Rules 33.00-40.00**

Reserved For Future Purposes



#### **IV. Criminal Rules**

##### **Rule 41.00**

##### **WAIVER OF APPEARANCE IN MISDEMEANORS CASES RULE 43(c)(2), F.R.CRIMP.**

A defendant in misdemeanor cases may execute a written waiver of appearance which contains the following statements:

(a) the designation of counsel to appear in behalf of the defendant and the granting to such counsel of full authority to enter on behalf of the defendant a plea of guilty, not guilty, or nolo contendere to the offense charged, or to a lesser offense or offenses in lieu thereof;

(b) a consent to trial by the magistrate judge; and, a waiver of: (1) the right to be tried and sentenced by a district judge, (2) the right to a jury trial, (3) the right to testify in person, and (4) the right to face his or her accusers;

(c) an agreement to be bound by the decisions of the court as in any other case of adjudication and the entry of judgment subject to the right of appeal as in any other case; and,

(d) the circumstances which justify the approval of the written waiver of appearance by the court.

The waiver of appearance must (1) be in writing, (2) be signed by the defendant and his or her counsel,

(3) be consented to by the United States Attorney or an Assistant United States Attorney and (4) be approved by the court.

##### **Rule 42.00**

##### **ARRAIGNMENT**

When a District Court Judge conducts the arraignment, the United States Attorney or an Assistant U.S. Attorney shall be present. If the arraignment is conducted by Magistrate Judges under the provision of Rule 19(B)(4) F.R. Crim. P., the presence of the U.S. Attorney at arraignment is not mandatory, and in the absence of the U.S. Attorney, the Magistrate Judge shall conduct the arraignment in accordance with Rule 10, F.R. Crim. P.

##### **Rule 43.00**

##### **CRIMINAL PRE-TRIAL DISCOVERY AND INSPECTION**

**43.01: Criminal Pre-Trial Conference.** Within 20 days after indictment or initial appearance, whichever comes later, the United States Attorney shall arrange and conduct a pre-trial conference with counsel for the defendant. At the pretrial conference and upon the request of counsel for the defendant, the Government shall permit counsel for the defendant to inspect and copy all discoverable evidence under Rule 16 of the Federal Rules of Criminal Procedure. Additionally, the Government shall provide the right to inspect, copy or photograph any exculpatory evidence.

At the pre-trial conference and upon the request of counsel for the defendant, the government shall permit counsel for the defendant:

(a) to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government;

(b) to inspect and copy or photograph any relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government;

(c) to inspect and copy or photograph any relevant recorded testimony of the defendant before a grand jury;

(d) to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places which are the property of the defendant and which are within the possession, custody or control of the government;

(e) to inspect and copy or photograph the Federal Bureau of Investigation Identification Sheet indicating defendant's prior criminal record; and

(f) to inspect, copy or photograph any exculpatory evidence.

**43.02: Discovery From Defendant.** After discovery has been provided by the Government, and upon request of the Government, counsel for the defendant shall permit the Government to inspect any copy all discoverable evidence under Rule 16(b) of the Federal Rules of Criminal Procedure.

**43.03: Exchange of Discovery by Mail.** The United States Attorney and counsel for the defendant, in lieu of the conference, may agree to the exchange of discovery material by mail.

**43.04: Further Discovery or Inspection.** In the event that either party thereafter moves to compel compliance with Local Rule 43.01 or for additional discovery or inspection, such motion shall be filed within the time period set by Local Rule 44.00. The motion shall contain:

(a) the statement that the prescribed conference was held;

(b) the date of said conference;

(c) the names of all counsel participating in the conference; and

(d) the statement that agreement could not be reached concerning the discovery or inspection that is the subject of the motion and the reasons given for the same.

**43.05: Duty of Disclosure.** Any duty of disclosure and discovery set forth in Local Rule 43.00 is a continuing one and the United States Attorney and counsel for the defendant shall produce voluntarily any additional relevant information gained by either of them.

#### **Rule 44.00**

#### **TIME PERIOD FOR FILING PRE-TRIAL MOTIONS IN CRIMINAL CASES**

All pre-trial motions, including but not limited to motions to suppress and motions under Rules 7, 12, 14, 16, and 41, F.R.Crim.P., shall be filed no later than 30 days after indictment or initial appearance, whichever comes later. Responses shall be filed within ten days after the service of such motions. Untimely motions may be summarily disregarded.

#### **Rule 45.00**

#### **PUBLICITY IN CRIMINAL MATTERS**

**45.01: Statements By One Participating in or Associated With an Investigation.** An attorney participating in or associated with the investigation of a criminal matter shall not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(a) information contained in a public record;

(b) that the investigation is in progress;

(c) the general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim;

(d) a request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto; and

(e) a warning to the public of any dangers.

**45.02: Statements After Filing Complaint, Information, or Indictment, Issuance of Warrant or Arrest.** An attorney or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication that relates to:

(a) the character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused;

(b) the possibility of a plea of guilty to the offense charged or to a lesser offense;  
(c) the existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make a statement;  
(d) the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examination or tests;

(e) the identity, testimony, or credibility of a prospective witness; or

(f) any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

**45.03: Statements That Can Be Made.** This rule does not preclude an attorney during such period from announcing:

(a) the name, age, residence, occupation, and family status of the accused;

(b) if the accused has not been apprehended, any information necessary to aid in apprehension of the accused or to warn the public of any dangers the accused may present;

(c) a request for assistance in obtaining evidence;

(d) the identity of the victim of the crime;

(e) the fact, time, and place of arrest, resistance, pursuit, and use of weapons;

(f) the identity of investigating and arresting officers or agencies and the length of the investigation;

(g) at the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement;

(h) the nature, substance, or text of the charge;

(i) quotations from or references to public records of the court in the case;

(j) the scheduling or result of any step in the judicial proceedings; or

(k) that the accused denies the charges made against him.

**45.04: Statements During Jury Selection or Trial.** During the selection of a jury or the trial of a criminal matter, an attorney or a law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that the attorney may quote from or refer without comment to public records of the court in the case.

**45.05: Statements After Trial, Disposition Without Trial, or Sentencing.** After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, an attorney or a law firm associated with the prosecution or defense shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the sentence.

**45.06: Statements of Staff and Employees.** An attorney shall exercise reasonable care to prevent employees and associates from making an extra-judicial statement that the attorney would be prohibited from making under this Local Rule 45.00 and Local Rule 7.00.

#### **Rule 46.00**

### **PETITION FOR DISCLOSURE OF PRESENTENCE OR PROBATION RECORDS**

No confidential records of this court maintained by the probation office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this court establishing with particularity the need for specific information in the records. Whenever a probation officer is served with a subpoena or other judicial process seeking the production or disclosure of presentence and probation records and reports, the probation officer shall petition the Chief Judge of this court in writing for instructions with respect to responding to such process. In no event shall production or disclosure be made except pursuant to an order by a judge.

#### **Rule 47.00**

### **TIME OF ISSUANCE OF SUBPOENAS IN CRIMINAL CASES**

Subpoenas for witnesses in criminal cases shall be delivered to the Marshal or other person qualified to make service at least seven days prior to the Monday of the week in which the case is set for trial. The failure of the Marshal or other qualified person to serve a subpoena not delivered within this time period shall not constitute sufficient cause for a continuance.

#### **Rule 48.00**

##### **APPEARANCE OF COUNSEL IN CRIMINAL CASES**

**48.01: Obligation to Notify the Court.** A defendant who does not apply for representation at government expense, or who is deemed ineligible after application, must inform the court of the identity of retained counsel within 10 days of his first appearance before a judicial officer in this district. Retention of counsel outside this period will not constitute grounds for a continuance of pre-trial proceedings or trial unless the defendant demonstrates due diligence in attempting to retain counsel.

**48.02: Notice of Appearance.** Counsel representing a defendant in a criminal action shall file a Notice of Appearance with the Clerk and serve the U. S. Attorney and other counsel with a copy.

#### **Rule 49.00**

##### **ATTORNEY PREPARATIONS FOR CRIMINAL TRIAL**

(a) Unless the parties have previously entered into and executed a written plea agreement, counsel for each party shall file with the Clerk and the assigned judge, on or before the Thursday preceding the first day of the session at which the criminal action is set for trial:

- (1) *voir dire* questions as required by Local Rule 6.02;
- (2) requests for jury instructions.

(b) Before jury selection begins, all parties shall file with the court a list of all witnesses each party, in good faith, reasonably anticipates will be called in its evidence-in-chief.

#### **Rule 50.00**

##### **PROCEDURES IMPLEMENTING SENTENCING GUIDELINES**

**50.01: Scheduling of Sentencing.** Sentencing proceedings shall be scheduled by the court at the time of adjudication of guilt not earlier than sixty (60) days following the adjudication of guilt.

**50.02: Time for Completion of Presentence Report.** No later than thirty-five (35) days prior to sentencing, the probation officer shall complete and disclose the presentence investigation report to the defendant, counsel for the defendant, and counsel for the government.

**50.03: Time for Filing Objections to Presentence Report.** Within fourteen (14) days thereafter, counsel shall communicate, in writing, to the probation officer objections to any material information, sentencing classifications, guideline ranges, and policy statements contained in or omitted from the report. A copy shall be served on opposing counsel. The court may conduct a show cause hearing and/or disallow objections in any case where such objections are not timely filed.

**50.04: Procedure for Resolving Objections to Presentence Report.** After receiving objections from counsel, the probation officer shall conduct such further investigation as may be necessary. Counsel shall jointly confer with the probation officer to discuss and attempt to resolve contested issues. Thereafter, the probation officer shall make such revisions to the presentence investigation report as the probation officer deems appropriate. Unresolved contested issues, including the written position as filed by counsel and the opinion of the probation officer, shall be contained in an addendum to the Presentencing Investigation Report.

**50.05: Time for Filing Revised Presentence Report.** The revised presentence investigation report and addendum shall be delivered to the judge, the defendant, and counsel not later than seven (7) days prior to the sentencing hearing.

The probation officer's sentencing recommendation shall be disclosed only to the judge.

**50.06: Expedited Procedures where Defendant Detained.** If it appears that a defendant may be detained pending trial and sentencing for a period of time exceeding the sentence likely to be imposed under the guidelines, the court, upon motion of counsel for defendant at the time of adjudication of guilt, may direct the probation office to expedite the sentencing timetable.

**50.07: Court Acceptance of Presentence Report.** The revised presentence investigation report may be accepted by the court as accurate except as to matters set forth in the addendum which shall be resolved as provided in Section 6A1.3 of the *United States Sentencing Commission Guidelines Manual* (November 1995).

**50.08: Service of Presentence Report.** The presentence investigation report shall be deemed to have been disclosed when a copy is physically delivered or three (3) days after a copy is mailed. Such dates shall be certified on the report by the probation officer.

**50.09: Procedure at Sentencing.** Before final judgment is entered in a case, the court shall disclose to the defendant, defense counsel, and the attorney for the government, the court's tentative findings of fact and interpretation of applicable guidelines and shall afford the parties an opportunity to object to said tentative findings of fact and interpretation of the guidelines.

**50.10: Filing of Presentence Report Under Seal.** The final presentence investigation report, addendum, and probation officer's recommendation shall be filed with the Clerk under seal for inclusion in the record and shall be otherwise disclosed only upon order. Defendants and counsel may retain their copies.

**50.11: Role of Defense Counsel in Presentence Investigation.** Upon adjudication of guilt, the probation officer will initiate the presentence investigative process. Counsel for the defendant shall advise the probation officer attending court whether or not the defendant will submit to an interview with the officer and whether or not counsel desires to be present at the interview. Counsel, if attending, and the defendant shall make themselves available for the interview on the day of adjudication with the U. S. Marshal's Service providing, in custody cases, an appropriate location sufficient for accommodating a private interview at the court site or in the immediate vicinity thereof. If extraordinary circumstances prohibit conducting the interview on the day of adjudication, the probation officer will make arrangements to interview the defendant within three (3) working days following adjudication and afford defense counsel notice of the date, time, and location of the interview should counsel desire to attend.

#### **Rules 51.00 to 59.00**

Reserved for Future Purposes.

### **V. MAGISTRATE JUDGES**

#### **Rule 60.00**

### **STANDARDS OF PERFORMANCE**

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the Local Rules and procedures of this court, and to the requirements specified in any order of reference from a judge.

#### **Rule 61.00**

### **ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES**

#### **61.01: Criminal Cases.**

(a) **Misdemeanor Cases.** Upon the filing of an information, complaint or violation notice, or the return of an indictment, all misdemeanor cases shall be assigned by the clerk to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and the Rules of Procedure for the Trial of Misdemeanors before United States

Magistrate Judges.

(b) **Felony Cases.** Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the clerk to a magistrate judge for the conduct of an arraignment and such pre-trial conferences as are necessary, and for the hearing and determination of all pre-trial procedural and discovery motions, in accordance with Local Rule 62.04.

**61.02: Civil Cases.** Upon filing, all civil cases shall be assigned by the clerk to a magistrate judge for the conduct of such discovery and pre-trial conferences as are necessary and for the hearing and determination of all pre-trial procedural and discovery motions, in accordance with Local Rule 62.03. Where designated by a judge, the magistrate judge may conduct additional pre-trial conferences and hear motions and perform the duties set forth in Local Rules 62.04, 62.05 and 62.06. Where the parties consent to trial and disposition of a case by a certified magistrate judge under Local Rule 21.00, such case shall, with the approval of the judge to whom it was assigned at the time of filing, be reassigned to a certified magistrate judge for the conduct of all further proceedings and the entry of judgment.

**61.03: General.** Nothing in these rules shall preclude a judge from reserving any proceeding for conduct by a judge, rather than a magistrate judge. The judge, moreover, may by order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

## **Rule 62.00**

### **AUTHORITY OF MAGISTRATE JUDGES**

**62.01: Duties Under 28 U.S.C. § 636(a).** A magistrate judge is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

- (a) exercise all the powers and duties conferred or imposed upon United States commissioners by law and the Federal Rules of Criminal Procedure;
- (b) administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions; and
- (c) conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

**62.02: Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401.** A magistrate judge may:

- (a) try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;
- (b) direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and
- (c) conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

**62.03: Determination of Non-Dispositive Pre-Trial Matters -- 28 U.S.C. § 636(b)(1)(A).** A magistrate judge may hear and determine any procedural or discovery motion or other pre-trial matter in a civil or criminal case, other than the motions which are specified in Local Rule 62.04.

**62.04: Recommendations Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).**

(a) A magistrate judge may submit to a judge a report containing proposed findings of fact and recommendations for disposition by the judge of the following pre-trial motions in civil and criminal cases:

- 1. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
- 2. Motions for judgment on pleadings;
- 3. Motions for summary judgment;
- 4. Motions to dismiss or permit the maintenance of a class action;
- 5. Motions to dismiss for failure to state a claim upon which relief may be granted;
- 6. Motions to involuntarily dismiss an action;
- 7. Motions for review of default judgments;
- 8. Motions to dismiss or quash an indictment or information made by a defendant; and
- 9. Motions to suppress evidence in a criminal case.

(b) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this Local Rule 62.04.

**62.05: Prisoner Cases Under 28 U.S.C. § 2254 and § 2255.** A magistrate judge may perform any or all of the duties

imposed upon a judge by the rules governing proceedings in the United States district courts under 28 U.S.C. § 2254 and § 2255. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition shall only be made by a judge.

**62.06: Prisoner Cases Under 42 U.S.C. § 1983.** A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

**62.07: Special Master References.** A magistrate judge may be designated by a judge to serve as special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53, F.R.Civ.P. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as special master in any civil case, notwithstanding the limitations of Rule 53(b), F.R.Civ.P.

**62.08: Conduct of Trial and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. § 636(c).** Subject to the provisions of Local Rule 21.00, a certified magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings, a magistrate judge may hear and determine any and all pre-trial and post-trial motions, including case-dispositive motions.

**62.09: Other Duties.** A magistrate judge is also authorized to:

(a) exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(b) conduct discovery conferences, pre-trial conferences, settlement conferences, omnibus hearings, and related pre-trial proceedings in civil and criminal cases;

(c) Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(d) receive grand jury returns in accordance with Rule 6(f), F.R.Crim.P.;

(e) accept waivers of indictment, pursuant to Rule 7(b), F.R.Crim.P.;

(f) conduct voir dire and select petit juries for the court;

(g) accept petit jury verdicts in civil cases in the absence of a judge;

(h) conduct necessary proceedings leading to the potential revocation of probation;

(i) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(j) order the exoneration or forfeiture of bonds;

(k) conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(l) conduct examinations of judgment debtors in accordance with Rule 69, F.R.Crim.P.;

(m) conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(n) perform the functions specified in 18 U.S.C. § 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein; and

(o) perform the duties specified by the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et. seq.;

(p) perform any additional duty consistent with the Constitution and laws of the United States.

## **Rule 63.00**

### **REVIEW AND APPEAL**

**63.01: Appeal of Non-Dispositive Matters -- 28 U.S.C. § 636(b)(1)(A).** Any party may appeal from a magistrate judge's order determining a motion or matter under Local Rule 62.03 within ten days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge shall consider the appeal and shall set aside any

portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matters determined by a magistrate judge under this rule.

**63.02: Review of Case-Dispositive Motions and Prisoner Litigation -- 28 U.S.C. § 636(b)(1)(B).** Any party may object to a magistrate judge's proposed findings, recommendations or report under Local Rules 62.04, 62.05 or 62.06, within ten days after being served with a copy thereof. Such party shall file with the clerk, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within ten days after being served with a copy thereof. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

**63.03: Special Master Reports -- 28 U.S.C. § 636(b)(2).** Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(e), F.R.Civ.P.

**63.04: Appeal from Judgments in Misdemeanor Cases -- 18 U.S.C. § 3402.** A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal and paying a \$5.00 filing fee within ten days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

**63.05: Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties -- 28 U.S.C. § 636(c).**

(a) **Appeal to the Court of Appeals.** Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. § 636(c) and Local Rule 62.08, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

(b) **Appeal to a District Judge.**

1. **Notice of Appeal.** In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a district judge, rather than directly to the Court of Appeals. In such case the appeal shall be taken by filing a notice of appeal with and paying a \$5.00 filing fee to the clerk within 30 days after entry of the magistrate judge's judgment but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of the judgment. For good cause shown, the magistrate judge or a judge may extend the time for filing the notice of appeal for an additional 20 days. A request for such extension, however, shall be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

2. **Service of the Notice of Appeal.** The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his or her last known address.

3. **Record on Appeal.** The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).

4. **Memoranda.** The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his or her memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

5. **Disposition of the Appeal by a Judge.** The judge shall consider the appeal on the record, in the same manner



as if the case had been appealed from a judgment of the district court to the court of appeals and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate judge's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate judge to judge the credibility of the witnesses.

**63.06: Appeals from other Orders of a Magistrate Judge.** Appeals from any other decisions and orders of a magistrate judge not provided for in this Local Rule 63.00 should be taken as provided by governing statute, rule, or decisional law.

#### **Rules 64.00 to 79.00**

Reserved for Future Purposes

## **VI. Admiralty and Maritime Claims**

### **Rule 80.00**

#### **TITLE AND SCOPE**

These rules are entitled Admiralty Rules and may be cited as "Local Admiralty Rules" or "LAR". They apply to the maritime and admiralty proceedings as defined in Supplemental Rule A of the Federal Rules of Civil Procedure. The Local Rules of the United States District Court for the Eastern District of North Carolina apply to all civil cases, including admiralty and maritime proceedings, but if a local rule is inconsistent with an admiralty rule, the admiralty rule shall control. As used in these LAR, "court" means a U. S. District Judge or a U. S. District Magistrate Judge.

### **Rule 81.00**

#### **PROCESS**

##### **(a) Order Authorizing the Clerk to Issue Process of Arrest, Attachment or Garnishment.**

Except in actions by the United States for forfeitures, before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under Supplemental Rules B and C, the pleadings, the affidavit required by Rule B, and accompanying supporting papers must be reviewed by the court. The clerk may refer a motion under this provision to any magistrate judge or judge of the court who is reasonably available, regardless of the judge to whom the action is assigned. The motion may be heard and the decision thereon communicated to the clerk telephonically. If the court finds the conditions set forth in Rules B or C appear to exist, as appropriate, the court shall authorize the clerk to issue process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

##### **(1) Order**

Upon approving the application for arrest, attachment or garnishment, the court will issue an order to the clerk to issue such process. The proposed form of order authorizing the issuance of such process and the proposed process itself shall be submitted to the court or the clerk before the court's review.

##### **(2) Exigent Circumstances**

If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review by the court impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for arrest of the vessel or other property without requiring a certification of exigent circumstances.

##### **(b) Return of Process -- Supplemental Rules C and D.**

Unless otherwise ordered by the court, all process from this court within the scope of Supplemental Rules C and D, Fed. R. Civ. P., shall be returnable by claim on or before ten days after execution of the process and by answer within twenty days following filing of claim or, in the event the property is not released within 10 days after execution of process, by filing a claim and serving answer within 20 days of publication as required by Rule C(4).

##### **(c) Return of Process -- Supplemental Rule B and F and other Rule 9(h) actions.**

Unless otherwise ordered by the court, all process from this court within the contemplation of Supplemental Rules B and F, Fed. R. Civ. P., shall be in conformity therewith. Unless otherwise ordered by the court, all process in Rule 9(h), Fed. R. Civ. P. actions (other than process contemplated by Rules B, C, D and F) shall be returnable on or before 20 days following service.

##### **(d) Registry of Vessel Information.**

Whenever a vessel is to be served, the party seeking service shall inform the Marshal of the registry of the vessel to be served, provided, however, failure to so inform the Marshal shall not be cause for the Marshal to refuse to serve the said vessel or in any way invalidate service of process.

## **Rule 82.00**

### **ISSUANCE OF PROCESS**

**(a) Intangible Property.**

(1) **Issuance and Effect of Summons.** The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of the funds or other intangible property to show cause no later than ten (10) days after service why the funds or other property should not be delivered to the court to abide the judgment. The court, for good cause shown, may shorten or lengthen the time. Service of the summons has the effect of an arrest of the property and brings it within the control of the court.

(2) **Payment to Marshal.** The person who is served may deliver or pay over to the Marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy the claim. If such payment is made, the person served is excused from any duty to show cause.

(3) **Manner of Showing Cause.** The claimant of the property may show cause why the property should not be delivered to the court by serving and filing a claim as provided in Supplemental Rule C(6) within the time allowed to show cause, and by serving and filing an answer to the complaint within twenty (20) days thereafter.

(4) **Effect of Failure to Show Cause.** If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this Rule, the person who was served shall deliver or pay to the Marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy plaintiff's claim.

**(b) Seizure of Property Already in Custody of an Officer of the United States.**

In addition to the requirements of Supplemental Rule (C)(3), where property in the custody of an officer or employee of the United States is to be arrested or attached, the Marshal shall deliver a copy of the complaint and warrant for arrest, or summons and process of attachment, to such officer or employee or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The Marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the court.

(c) **Use of State Procedures.** When the plaintiff invokes a state procedure to attach or garnish property under Federal Rule 4(n), the process of attachment and garnishment shall so state.

(d) **"Not Within the District" Defined.** A defendant is considered to be "not found within the district" if, in an action *in personam*, service upon the defendant cannot be effected in person or upon an authorized officer or agent within the State of North Carolina or if the only effective service is through the Secretary of State, the North Carolina Long Arm Statute, or through any method of substituted service

## **Rule 83.00**

### **POST ARREST PROCEDURE**

(a) Whenever property is arrested, attached or garnished, any person claiming an interest in the property shall be entitled to a prompt hearing before the court on notice to the party bringing the arrest, attachment or garnishment and to all other parties who have appeared in the action. The hearing shall be noticed and scheduled as is a hearing on a request for temporary restraining order. At the hearing, the party that obtained the arrest, attachment or garnishment shall show cause why the arrest, attachment or garnishment order should not be vacated forthwith or other appropriate relief granted.

(b) If the arrest, attachment or garnishment was obtained under a certification of exigent circumstances, the party obtaining the arrest, attachment or garnishment shall have the burden to show that exigent circumstances existed.

(c) This Rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. § 603 and 604 or to action by the United States for forfeitures.

**Rule 84.00**

**PUBLICATION**

(a) Publication required by Supplemental Rule (C)(4), F.R.Civ.P. shall be made once, without further court order, in any one of the following newspapers:

**Northern Division:** Virginian Pilot, Norfolk, Virginia

The News and Observer, Raleigh, North Carolina

**Southern Division:** Wilmington Morning Star, Wilmington, North Carolina

**All Other Divisions:** The News and Observer, Raleigh, North Carolina

(b) If the property arrested is not released within ten days after execution of process, publication hereunder shall, unless otherwise ordered, be caused by the plaintiff or intervenor to be made within seventeen days after execution of process.

(c) Such notice shall be substantially as follows, except and unless otherwise provided in actions for the enforcement of forfeitures for violation of any federal statute:

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

\_\_\_\_\_ Division

In Admiralty

No. \_\_\_\_\_

Caption of Case

NOTICE: The United States Marshal, Eastern District of North Carolina, has on (date) arrested the (Vessel and appurtenances) (Property) in the above causes, civil and maritime for (nature of claim, i.e. contract, salvage, damage, collision, foreclosure of preferred mortgage, etc.) amounting to (\$ (and nature of unliquidated items)). Any person who has not been previously served with process and who is entitled to possession or who claims an interest in the (Vessel or Property), must file a claim and serve an answer on or before (date 20 days after publication), otherwise, default may be entered and condemnation ordered.

DATED at (city of publication), (state), (month, day and year of publication).

(Name)

(Address)

(Telephone Number)

(N.C. Bar Number)

(Attorney(s)) for

(Plaintiff)(Intervenor)

(d) Plaintiff or intervenor will cause to be furnished to the Marshal, at the time process issues in Supplemental Rules B, C and D., F.R.Civ.P. actions, a prepared statement of attachment and garnishment or arrest with blanks for completion of date thereof and for signature below the name and title of such Marshal, together with self-addressed envelope to plaintiff or plaintiff's attorney with sufficient postage affixed. The Marshal will promptly cause same to be completed and mailed after execution of process.

(e) Plaintiff shall effect publication required by Supplemental Rule F(4), F.R.Civ.P. without further court order, in any one of the following newspapers:

**Northern Division:** Virginian Pilot, Norfolk, Virginia

The News and Observer, Raleigh, North Carolina

**Southern Division:** Wilmington Morning Star, Wilmington, North Carolina

**All Other Divisions:** The News and Observer, Raleigh, North Carolina

(f) Whenever publication is required, the person or party causing the publication shall file with the clerk, no later than

30 days after the date of publication, sworn proof of publication by a person duly authorized by the newspaper to execute affidavits of legal notices, together with a copy of the publication, or reproduction thereof.

#### **Rule 85.00**

##### **STIPULATIONS FOR COSTS AND SECURITY**

(a) **Seamen.** Seamen suing as provided in 28 U.S.C. § 1916 shall not be required to file a stipulation for costs in the first instance. The court may however, order a stipulation to be given at any time.

In all actions *in rem* brought by seamen in their own names and for their own benefit for wages, salvage, or the enforcement of laws for their health or safety without prepaying costs or fees or furnishing security therefor, pursuant to 28 U.S.C. § 1916, the Marshal may at any time after service of process, attachment, or seizure of a vessel, petition any judge or magistrate judge of this court to require the posting of security for any or all reasonable expenses which have been or may be incurred while the vessel is in the custody of the Marshal. Upon filing such petition for the posting of security, a hearing date shall promptly be set by the court and the Marshal shall give notice of the time and place of such hearing by serving a copy of the notice of hearing together with a copy of the petition upon counsel of record for the parties or upon the parties, and by posting a copy of the same on the vessel.

(b) **Increase or Decrease in Security.** At any time, any party having an interest in the subject matter of the action may move the court, on due notice and for cause, for greater, better or lesser security; and any such order may be enforced by attachment or otherwise. The court may enter such order on its own motion, with or without notice.

(c) **Deposit Required Before Seizure.** Any party, including any intervenor, who seeks arrest, attachment or garnishment of property in an action governed by Supplemental Rule E and Federal Rule 4(e) shall deposit with the Marshal the sum estimated by the Marshal to be sufficient to pay the fees and expenses of arresting, attaching, or garnishing and keeping the property for at least ten days, or such lesser amount as the Marshal deems sufficient. The Marshal is not required to execute process of arrest, attachment or garnishment until such deposit is made.

(d) **Additional Deposits Required After Seizure.** Any party who has caused the Marshal to arrest, attach or garnish property shall advance additional sums from time to time as required by the Marshal to pay the fees and expenses of the Marshal until the property is released or disposed of as provided in Supplemental Rule E.

(e) **Sanction for Failure to Make Deposit.** Any party who fails to make a deposit when required by the Marshal may be subject to sanctions including the release of the vessel.

(f) In complying with the provisions of Supplemental Rule F(1) concerning security for costs, if plaintiff elects to post cash, that sum shall be \$250.00; if the plaintiff elects to post a bond, the amount of the bond shall be \$250.00; if the plaintiff elects to post a bond, the amount of the bond shall be \$250.00 plus interest at the rate of 6% per annum from the date of the security.

#### **Rule 86.00**

##### **STIPULATIONS AND UNDERTAKINGS**

(a) Except in cases instituted by the United States by information, or complaint of information upon seizures for any breach of the revenue, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed on behalf of the stipulator or obligor by his/its agent or counsel. Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed on his/its behalf by his/its agent or counsel, and shall be sufficient in any event if executed only by the surety approved by the court.

(b) If, before or after commencement of suit, the arresting, attaching or garnishing party accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or for stipulating to the release of such vessel or other property, the undertaking shall be filed, shall become the res in place of the vessel or other property sued and shall be deemed the subject referred to when any pleading, order or judgment in the action refers to the vessel or other property. The preceding shall apply to any such undertaking, subject to its own terms, whether or not it has been approved by a judge or the clerk.

## **Rule 87.00**

### **PLEADINGS AND PARTIES**

(a) Every complaint filed as a Rule 9(h), F.R.Civ.P. action shall set forth "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint pursuant to such rule.

(b) In actions under Supplemental Rule B, C or D, F.R.Civ.P. the business telephone number and address of the plaintiff's counsel or the plaintiff, if plaintiff appears pro se, shall be included.

(c) Every complaint in Supplemental Rules B and C, F.R.Civ.P. actions shall state the amount of the debt, damages, or salvage for which the action is brought, and shall include in addition thereto the amounts of unliquidated claims, including attorneys fees. The defendant or claimant may post bond pursuant to Supplemental Rule E(5) based on such allegations.

(d) In cases of salvage, the complaint shall also state to the extent known or estimated the value of the hull, cargo, freight and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in the behalf of all other persons interested or associated with them. There shall also be attached to the complaint a list of all known salvors and all persons believed entitled to share in the salvage, and also any agreement of consortium available and known to exist among them or any of them, including a copy of any such agreement.

## **Rule 88.00**

### **VERIFICATION OF PLEADINGS AND ANSWERS TO INTERROGATORIES**

Every complaint and claim in Supplemental Rules B C and D, F.R.Civ.P. actions shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint, claim or answers to interrogatories may be made by an agent, attorney-in-fact or attorney of record, who shall state briefly the sources of his or her knowledge, information and belief, declare that the document affirmed is true to the best of his or her knowledge, information and belief, state the reason why verification is not made by the party or a corporate officer, and that he or she is authorized so to act. Any such verification will be deemed to have been made by the party to whom a document might apply as if verified personally. Any interested party may move the court, with or without a request for stay, for the personal oath of a party or all parties, or that of a corporate officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.

## **Rule 89.00**

### **INTERVENTION**

(a) Presentation of Claim. When a vessel or other property has been arrested, attached or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone seeking to enforce a claim against the vessel or property shall present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by the Court. The Clerk shall promptly deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel and custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of a party originally arresting, attaching or garnishing the vessel or property unless otherwise herein provided, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) Intervention When Sale has been Scheduled. No party may intervene without first obtaining leave of Court if intervention is sought less than 15 days prior to the date for which a sale of the vessel or property has been set by the Court.

(c) Compliance with Rules. An Intervenor must comply with the Supplemental Rules for Certain Admiralty and

Maritime Claims, the Federal Rules of Civil Procedure and these Local Rules in accomplishing and perfecting the arrest, attachment or garnishment unless otherwise provided in this Local Rule 89.00 or by order of the Court.

(d) **Sharing of Marshal's Fees and Expenses.** At any time after the filing of a complaint in intervention, any party to the action or the Marshal may move the court for an order directing that the intervenor pay a fair share, as determined by the Court, of the Marshal's fees and expenses incurred and to be incurred for the arrest, attachment, garnishment, keeping, maintenance and security of the vessel or other property. A hearing on such motion may be held upon three days notice.

(e) **Intervenors' Obligations Upon Vacation of the Arrest, Attachment or Garnishment.** If an original arrest, attachment or garnishment is vacated, an intervenor who has delivered conformed copies of his complaint in intervention to the Marshal shall bear responsibility for the Marshal's fees and expenses and shall deposit the sum required by the Marshal for fees and expenses within forty-eight (48) hours after receiving written notice from the Marshal requiring such deposit. Such notice may be given as soon as the Marshal learns that the original arrest, attachment or garnishment is to be vacated. If more than one complaint in intervention has been delivered to the Marshal, the intervenors shall step into the position of the originally arresting, attaching or garnishing party as provided herein in order of the delivery of their complaints in intervention to the Marshal.

(f) **Service and Responsive Pleadings.** Upon the filing of a complaint in intervention, the intervenor, in addition to any other service required by statute, the Federal Rules of Civil Procedure, these Local Rules or order of the Court, shall serve a copy of (1) the complaint in intervention, (2) the order authorizing arrest, attachment or garnishment, and (3) the warrant, writ and/or summons on all parties who have appeared in the action pursuant to Rule 5, Federal Rules of Civil Procedure. Within 20 days of such service, each party to the action shall serve an answer, motion or other responsive pleading to the complaint in intervention consistent with Rule 12, Federal Rules of Civil Procedure and the intervenor shall serve an answer, motion or other responsive pleading to the complaints and claims previously filed in the action.

#### **Rule 90.00**

#### **DEFAULT IN ACTION IN REM**

(a) **Notice Required.** A party seeking a default judgment in an action in rem must show that due notice of the action and arrest of the property has been given:

- (1) By publication, as required in LAR 84;
- (2) By service on the master or other person having custody of the property;
- (3) By service on every other person who has not appeared in the action and is known to have an interest in the property; and
- (4) By service in accordance with the Foreign Sovereign Immunities Act, if the property is subject to that Act.

(b) **Persons with Recorded Interests.**

- (1) If the defendant property is a vessel documented under the laws of the United States, a party seeking default judgment must obtain a current certificate of ownership from the United States Coast Guard and attempt to serve persons named in the certificate who appear to have an interest in the property.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, a party seeking default judgment must obtain information from the authority issuing the number and attempt to serve persons named in the records of the issuing authority who appear to have an interest in the property.
- (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, a party seeking default judgment must attempt to notify all persons named in the records of each such registry who appear to have an interest in the property.

(c) **Manner of Giving Notice.** A required notice, other than by publication, of the action and arrest of the property shall be given by delivery under Federal Rule 5(b).

## **Rule 91.00**

### **ENTRY OF DEFAULT**

After the time for filing claim or answer has expired, the plaintiff may request an entry of default under Federal Rule 55(a). Default will be entered upon showing that:

- (a) Notice has been given as required in LAR 90:00; and
- (b) No claim has been served or filed within the prescribed time or no answer has been served or filed within the prescribed time.

The plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

## **Rule 92.00**

### **CUSTODY OF PROPERTY**

(a) **Safekeeping of Property When Seized.** When a vessel, cargo or other property is seized, the Marshal shall take custody and arrange for adequate and necessary security for its safekeeping which may include, in the Marshal's discretion, the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in lieu of the Marshal. When a vessel with crew aboard is seized, the removal of such crew shall fall within the discretion of the United States Marshal.

(b) **Cargo Handling, Repairs and Movement of the Vessel.** Upon arrest or attachment of the vessel, no cargo handling, repairs or movement of the vessel may be made without a court order except in an emergency situation in the discretion of the Marshal. Written notice shall be given to the Marshal and to all parties who have appeared prior to the application for such order, and the certificate of service of such notice shall be filed with the clerk before application is made to the court. For good cause shown, the court may direct the Marshal to allow the conduct of cargo handling, repairs, movement of the vessel or other operations on a vessel under arrest or attachment. Neither the United States nor the Marshal shall be liable for the consequence of the undertaking or continuation of any such activities during the arrest or attachment.

(c) **Motion for Change in Arrangements.** Prior to or after a vessel, cargo or property has been taken into custody by the Marshal, any party then appearing may move the court to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties who have appeared.

(d) **Insurance.** The Marshal may order insurance to protect the Marshal, his deputies, keepers and substitute custodians from liability assumed in arresting and holding the vessel, cargo or other property and performing whatever services are undertaken to protect the vessel, cargo or other property and maintain the court's custody. The party applying for arrest of the vessel, cargo or other property shall reimburse the Marshal for premiums paid for the insurance. The party applying for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is *in custodia legis*.

(e) A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court who has not been paid and claims the right to payment as an expense of administration shall file a verified claim with the Court at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim pursuant to Rule 5(b), Fed. R. Civ. P., on the U.S. Marshal, substitute custodian (if one has been appointed), and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

## **Rule 93.00**

### **APPRAISAL**

(a) **Order for Appraisal.** An order for appraisal of property so that security may be given or altered will be entered



by the clerk at the written request of any interested party. If the parties do not agree in writing on the selection of the appraiser, the court will appoint the appraiser.

(b) **Appraiser's Oath.** The appraiser shall be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths, and a copy of the oath shall be filed with the clerk.

(c) **Appraisal.** The appraiser shall give one day's notice of the time and place of making the appraisal to the parties who have appeared in the action. The appraiser shall file the appraisal in writing with the clerk as soon as it is completed and shall serve it on all parties.

(d) **Cost of Appraisal.** Absent stipulation of the parties or order of the court to the contrary, the appraiser shall be paid by the party requesting the appraisal. Appraiser's fees shall thereafter be taxed as the court orders.

## **Rule 94.00**

### **SALE OF PROPERTY**

(a) **Publication of Notice of Sale.** Unless otherwise ordered upon a showing of urgency, impracticality or other good cause, or as provided by law, notice of the sale of property shall be published daily, at least twice, the first publication to be at least one calendar week prior to date of sale and the second publication to be at least three calendar days prior to the date of sale, unless otherwise ordered by the court.

(b) **Place of Sale.** The place of sale will occur at the Federal Courthouse in the division in which the property is located unless the court otherwise directs.

(c) **Payment of Bid.** The person whose bid is accepted shall immediately pay the Marshal either the full purchase price if the bid is no more than \$500 or a deposit of \$500 or ten percent of the bid, whichever is greater, if the bid exceeds \$500. The bidder shall pay the balance of the purchase price within three court days following the sale. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until three court days after the sale is confirmed. Payments to the Marshal shall be in cash, certified check or cashier's check. The court may specify different terms in any order of sale.

(d) **Penalty for Late Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed under these rules or a different time specified by the court shall also pay the Marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the Marshal shall refuse to release the property until this additional charge is paid.

(e) **Penalty for Default in Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the Marshal by reason of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) **Report of Sale by the Marshal.** At the conclusion of the sale, the Marshal shall forthwith file a written report with the court of the fact of sale, the date thereof, the price obtained, the name and address of the successful bidder, and any other pertinent information.

(g) **Time and Procedure for Objection to Sale.** An interested person may object to the sale by filing a written objection with the clerk within three court days following the sale, serving the objection on all parties, the successful bidder and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. Payment to the Marshal shall be in cash, certified check, or cashier's check. The written objection must be endorsed by the Marshal with an acknowledgment of receipt of the deposit prior to filing with the clerk.

(h) **Confirmation of Sale Without Motion.** A sale shall stand confirmed as of course without any affirmative action by the court unless (1) written objection is filed with the court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the Marshal. The purchaser in a sale so confirmed as of course shall present a form of order reflecting the confirmation of the sale for entry by the clerk on the fourth court day following the sale. The Marshal shall transfer title to the purchaser upon presentation of such order by the clerk.

(i) **Confirmation of the Sale on Motion.** If an objection has been filed or if the successful bidder is in default, the Marshal, the objector, the successful bidder, or a party may move the court for relief. The motion will be heard summarily by the court. The person seeking a hearing on such motion shall apply to the court for an order fixing the date and time of the hearing and directing the manner of giving notice and shall give written notice of the motion to the Marshal, all parties, the successful bidder and the objector. The court may confirm the sale, order a new sale, or grant such other relief as justice requires.

(j) **Disposition of Deposits.**

(1) **Objection Sustained.** If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) **Objection Overruled.** If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(k) **Title to Property.** Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property or required notice of the sale may afford grounds for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.

### **Rule 95.00**

#### **RELEASE OF SEIZURES -- CUSTODIAL COST -- GENERAL BONDS**

(a) Property seized by the Marshal may be released as follows:

(1) By the Marshal upon the receipt of security by the Marshal, accompanied by the endorsed express authorization for release signed by the party or counsel for the party as provided by Supplemental Rule E(5)(c), F.R.Civ.P. if all costs and charges of the court and its officers shall have first been paid. Monies received as part of any cash stipulation shall be delivered by the Marshal to the clerk for deposit in the registry of the court.

(2) In action entirely for a sum certain, by paying into the court the amount alleged in the complaint to be due, with interest at ten percent per annum thereon from the date claimed to be due to a date 24 months after the date the claim was filed, or by filing an approved stipulation for such alleged amount and interest. In either event, claim of the property shall be filed.

(3) In actions other than possessory, petitory, and partition, by filing, in addition to a claim of the property, an approved stipulation for the amount of the appraised or agreed value of the property seized, with interest (unless otherwise ordered by the court), interlocutory or final, and to pay the amount awarded by the final decree rendered by this court or by any appellate court, with interest.

(4) In possessory, petitory, and partition actions, only upon the order of the court, and on such security and terms as ordered.

(5) Upon the dismissal or discontinuance of the action or upon the written consent of the attorney for the party on whose behalf the property is detained, if all costs and charges of the court and its officers shall have first been paid.

(b) The Marshal shall not deliver any property so released until costs and charges of the Marshal shall first have been paid.

(c) In any general bond as provided for by Supplemental Rule E(5)(b), F.R.Civ.P. the vessel will be identified by name, nationality, dimension, official number or registration number, hailing port and port of documentation, to the extent applicable. The owner of such vessel shall also file complete designated United States address for communications to the owner or designated agent, which shall be by mail. Execution of process against the vessel so stayed under Supplemental Rule E(5)(b), F.R.Civ.P. shall be endorsed to the Marshal as stayed pursuant to the rule. Such process shall be served by the Marshal together with a copy of the complaint on the master or other person in whose charge or custody the vessel is found and the Marshal shall make his or her return thereof. If no master or other person in charge of custody is found aboard the vessel, the Marshal shall so make his or her return accordingly, and the clerk shall advise by mail the owner or designated agent, at the address furnished pursuant to this rule, of the nature of the action, any amount claimed, the plaintiff, the name and address of plaintiff's attorney, the case number, and the return day thirty days

from the date of the Marshal's attempt. The clerk will maintain a current list of vessels subject to a general bond and file said bonds alphabetically by name of vessel and endorsed as provided by Supplemental Rule E(5)(b), F.R.Civ.P.

#### **Rule 96.00**

### **TAXATION OF COSTS**

If costs shall be awarded to either or any party, then the reasonable premium or expenses paid on all bonds or stipulations or other security by the party in whose favor such costs are allowed shall be taxed as a part of the costs of the case. In addition thereto, if costs shall be awarded to either or any party, then the reasonable expenses paid by a party incidental to or arising out of the attachment or arrest of any property in the proceedings or while said property is "in custodia legis" shall be taxed as a part of the costs of the case.

#### **Rule 97.00**

### **STAY OF EXECUTION OR OF RELEASE OF PROPERTY AFTER JUDGMENT OR DISMISSAL**

No execution of judgment shall issue nor shall seized property be released pursuant to judgment or order of dismissal, until ten days after its entry. Upon the filing of a motion for new trial or notice of appeal or motion to set aside default within said ten-day period, a further stay shall exist for a period not to exceed thirty days from the entry of judgment or dismissal to permit the entry of an order fixing the amount of a supersedeas bond and the filing of same.

#### **Rule 98.00**

### **POSSESSORY ACTIONS -- SHORT DAY RETURN**

In all possessory actions upon special order of the court, process may be made returnable upon a short day. The answer shall be filed within such time as may be specifically ordered by the court, and a day of hearing then fixed, unless otherwise ordered. The hearing of possessory suits shall be given preference.

#### **Rule 99.00**

### **CLAIMS AFTER SALE - HOW LIMITED**

Claims upon the proceeds of sale of property under a final decree, except for seamen's wages, shall not be admitted in behalf of lienors who file their claims after the sale, to the prejudice of lienors who filed their claims before the sale, but shall be limited to remnants and surplus, unless for cause shown it shall be otherwise ordered.

#### **Rule 100.00**

### **ALTERNATIVE DISPUTE RESOLUTION**

In all actions governed by these Local Admiralty Rules, all parties are encouraged to consider early judicial intervention and at least one alternative dispute resolution procedure provided for in the Local Rules 30.00 - 32.00 or another form of alternative dispute resolution approved by the Court. The alternative dispute resolution procedure shall be identified in the Discovery Plan and should be completed no later than 90 days after the entry of the Scheduling Order.